CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 33 DECEMBER 8, 1999 NO. 49

This issue contains:

U.S. Customs Service

T.D. 99–82 Through 99–86

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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U.S. Customs Service

Treasury Decisions

(T.D. 99–82)

CANCELLATION OF CUSTOMS BROKER LICENSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' licenses cancellations.

SUMMARY: I, as Commissioner of Customs, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers' licenses due to the deaths of the brokers.

Name	*Port*	*License No.*
Alfredo Zertuche, Jr.	Laredo	09376
George Helstrom	New York	03783
Saul Federman	New York	05607
Joseph Acosta	New Orleans	05054

Dated: November 19, 1999

RAYMOND W. KELLY,
Commissioner.

[Published in the Federal Register, November 24, 1999 (64 FR 66232)]

(T.D. 99–83)

RETRACTION OF REVOCATION NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs brokers licenses in the Federal Register.

Port	*Name*	*License No.*
Wilmington	Janice Carter Wilson	07440
New York	Robert P. Weinrib	06455
Kansas	Michael E. Welch	03778
Miami	Paul Francis Cassidy	12502

Licenses 07440, 06455, 03778 and 12502 are valid licenses.

Dated: November 19, 1999

RAYMOND W. KELLY,
Commissioner.

[Published in the Federal Register, November 24, 1999 (64 FR 66232)]

(T.D. 99–84)

CANCELLATIONS OF CUSTOMS BROKER LICENSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Brokers' licenses cancellations.

SUMMARY: I, the Commissioner of Customs, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 CFR 111.51(a)), hereby cancel the following Customs brokers' licenses without prejudice.

Port	*Individual*	*License No.*
Laredo	A and A Customs Brokerage Services, Inc.	10303
San Juan	Trans-port Broker Services, Inc.	9848
Los Angeles	DNT Customs Services, Inc.	11516
Los Angeles	Preferred LSI, Inc.	13840
Seattle	A.S.E. Customs and Logistics, Inc.	16140
San Francisco	Walker International	11898

Dated: November 19, 1999

RAYMOND W. KELLY,
Commissioner.

[Published in the Federal Register, November 24, 1999 (64 FR 66231)]

(T.D. 99–85)

REVOCATION OF CUSTOMS BROKER LICENSE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Broker license revocation.

SUMMARY: I, as Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641(g)(2)(c)), Part 111.53(b)(3)(c) and 111.53(b)(3)(f), hereby revoke the following Customs broker licenses with prejudice.

Port	*Individual*	*License No.*
Los Angeles	John V. Urbano	6884
Los Angeles	Abraham Shiepe	7114
New York	Robert Proto	4016

Dated: November 19, 1999

RAYMOND W. KELLY,
Commissioner.

[Published in the Federal Register, November 24, 1999 (64 FR 66231)]

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19 CFR Part 111

(T.D. 99–86)

ANNUAL USER FEE FOR CUSTOMS BROKER PERMIT; GENERAL NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of due date for broker user fee.

SUMMARY: This is to advise Customs brokers that the annual fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 3, 2000. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Adline Tatum, Broker Management, (202) 927–0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99–272) established that an annual user fee of $125 is to be assessed for each

Customs broker permit held by an individual, partnership, association, or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provide that this fee is payable for each calendar year in each location where the broker was issued a permit to do business by the due date which will be published in the Federal Register annually.

Section 1893 of the Tax Reform Act of 1986 (Pub.L. 99–514), provides that notice of the date on which a payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the Federal Register no later than 60 days before such due date. This document notifies brokers that for 2000, the due date for payment of the user fee is January 3, 2000. It is expected that annual user fees for brokers for subsequent years will be due on or about the third of January of each year.

Dated: November 22, 1999.

RAYMOND W. KELLY,
Commissioner.

[Published in the Federal Register, November 29, 1999 (64 FR 66692)]

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 11–1999)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of October 1999 follow. The last notice was published in the CUSTOMS BULLETIN on October 27, 1999.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Acting Chief, Intellectual Property Rights Branch, (202) 927–2330.

Dated: November 23, 1999.

CARIDAD BERDUT,
(for Jerry Ladderberg, Acting Chief,
Intellectual Property Rights Branch.)

The list of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP9900251	19991001	20181001	BIGGINS	OLLIE'S NOVELTIES	N
COP9900252	19991001	20181001	BIG BOY	OLLIE'S NOVELTIES	N
COP9900253	19991004	20191004	ITEM #4296 - COSGROVE	RUSS BERRIE AND COMPANY, INC.	N
COP9900254	19991006	20191006	BUSINESS CARD/EXEC (P 253)	H&K METAL DESIGNS, INC. LLC	N
COP9900255	19991006	20091006	DESK SET/MALE EXEC (P161)	H&K METAL DESIGNS, INC. LLC	N
COP9900256	19991006	20191006	POKEMON OFFICIAL NINTENDO PLAYER'S GUIDE	NINTENDO OF AMERICA INC.	N
COP9900257	19991013	20191013	BLUE'S CLUES "WINTER '99" HOOK BOOK	VIACOM INTERNATIONAL INC.	N
COP9900258	19991013	20191013	TOY CAR CASE	TARA TOY CORPORATION	N
COP9900259	19991014	20181014	MODEL NO. T-231 B/O MALAMUTE	TOMSTOYS INC.	N
COP9900260	19991014	20191014	SINGING BEAR NO: 991.B	TOMSTOYS, INC.	N
COP9900261	19991014	20191014	SINGING PARROT NO: 991.P	TOMSTOYS, INC.	N
COP9900262	19991014	20191014	SINGING FROG NO: 991.F	TOMSTOYS, INC.	N
COP9900263	19991014	20181014	MODEL NO. T-298 B/O SHEPHERD	TOMSTOYS	N
COP9900264	19991014	20171014	LITTLE DANNY (MODEL NO. 138)	TOMSTOYS	N
COP9900265	19991015	20191015	CEO BARBIE	MATTEL INC.	N
COP9900266	19991018	20191018	TOY STORY 2	DISNEY ENTERPRISES, INC.	N
COP9900267	19991022	20191022	BVLGARI CATALOG-SCARVES COLLECTION SPRING/SUMMER 1998	BULGARI S.P.A.	N
COP9900268	19991022	20191022	PROJECT FOR MODI PARENTHESIS	BULGARI S.P.A.	N
COP9900269	19991022	20191022	PARENTHESIS BRACELET MOD. 270	BULGARI S.P.A.	N
COP9900270	19991022	20191022	BVLGARI CATALOG -XL COLLECTION	BULGARI S.P.A.	N
COP9900271	19991022	20191022	NEW STAR MERRY CHRISTMAS PACKAGING (ENGLISH)	NEW STAR TOYS GIFTS INC.	N
COP9900272	19991022	20191022	NEW STAR MERRY CHRISTMAS PACKAGING (SPANISH)	NEW STAR TOYS GIFTS INC.	N
COP9900273	19991022	20191022	BEAUTE BOTTLE	BEAUTE PRESTIGE INTERNATIONAL	N
COP9900274	19991022	20191022	FIGURE OF CORSETED WOMAN	BEAUTE PRESTIGE INTERNATIONAL	N
COP9900275	19991022	20191022	FIGURE OF CORSETED WOMAN	BEAUTE PRESTIGE INTERNATIONAL	N
COP9900276	19991022	20191022	BAMBOO SQUARE VOTIVE CANDLEHOLDER	TIGER LILY	N
COP9900277	19991022	20191022	BUTTERFLY/DRAGONFLY PILLAR CANDLEHOLDER	TIGER LILY	N
COP9900278	19991022	20191022	BAMBOO LANTERN CANDLEHOLDER	TIGER LILY	N
COP9900279	19991022	20191022	BAMBOO PILLAR CANDLEHOLDER	TIGER LILY	N
COP9900280	19991022	20191022	BUTTERFLY/DRAGONFLY LANTERN	TIGER LILY	N
COP9900281	19991022	20191022	BUTTERFLY SQUARE VOTIVE CANDLEHOLDER	TIGER LILY	N
COP9900282	19991022	20191022	DRAGONFLY SQUARE VOTIVE CANDLEHOLDER	TIGER LILY	N
COP9900283	19991026	20161026	FUNNY BABIES	EMILY ANN BIRDSONG	N
COP9900284	19991027	20191027	HAMMOCK MAN II	TORI RICHARD LTD.	N
COP9900285	19991028	20191028	CINTAS NUEVAS	MICHAEL WINELAND	N
COP9900286	19991028	20191028	TECO LARGO SHIGRA	MICHAEL WINELAND	N
COP9900287	19991028	20191028	AFRICANA	MICHAEL WINELAND	N
SUBTOTAL RECORDATION TYPE		37			
TMK9900240	19991026	20080829	ANCO	COOPER AUTOMOTIVE PRODUCTS, INC.	N
TMK9900507	19991001	20081010	DON CLEMENTE	DON CLEMENTE INC.	N
TMK9900508	19991004	20080414	WOLVERINE BOOTS AND SHOES SINCE 1883	WOLVERINE WORLD WIDE, INC.	N
TMK9900509	19991004	20080414	WOLVERINE SINCE 1883	WOLVERINE WORLD WIDE, INC.	N
TMK9900510	19991004	20081208	WOLVERINE SINCE 1883	WOLVERINE WORLD WIDE, INC.	N
TMK9900511	19991004	20081208	WOLVERINE BOOTS AND SHOES SINCE 1883	WOLVERINE WORLD WIDE, INC.	N
TMK9900512	19991004	20080922	ULTRA	KAYCOR INTERNATIONAL LTD.	N
TMK9900513	19991005	20081201	LANZA	STEPHEN IMPORTS INC.	Y
TMK9900514	19991005	20090316	WCW	WORLD CHAMPIONSHIP WRESTLING, IN	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK9900515	19991005	20090406	PHILLIPS FOODS	PHILLIPS FOODS, INC.	N
TMK9900516	19991005	20070128	SAFESKIN AND DESIGN	SAFESKIN CORPORATION	N
TMK9900517	19991005	20040208	FRAGRANCE DELITE	LANCASTER COLONY CORPORATION	N
TMK9900518	19991006	20081110	GAME SHARK	INTERACT ACCESSORIES, INC.	N
TMK9900519	19991013	20050514	[illegible]	PLANET MARKETING INC.	N
TMK9900520	19991013	20090202	TRI MICRO AND DESIGN	NATIONAL SPINNING CO., INC.	N
TMK9900521	19991013	20080630	THE ORIGINAL B D BAGGIES AND DESIGN	APPAREL GROUP LTD.	N
TMK9900522	19991014	20090420	PHOTOSTUDIO	ARCSOFT, INC.	N
TMK9900523	19991014	20000717	REDSKINETTES	PRO FOOTBALL, INC.	N
TMK9900524	19991014	20080207	REDSKINS	PRO FOOTBALL, INC.	N
TMK9900525	19991014	20040625	THE REDSKINS (STYLIZED) PLUS DESIGN	PRO FOOTBALL, INC.	N
TMK9900526	19991014	20040618	WASHINGTON REDSKINS (PLUS DESIGN)	PRO FOOTBALL, INC.	N
TMK9900527	19991014	20040212	WASHINGTON REDSKINS	PRO FOOTBALL, INC.	N
TMK9900528	19991014	20070926	THE REDSKINS (STYLIZED)	PRO FOOTBALL, INC.	N
TMK9900529	19991015	20090112	TAWK-CHAWK	DON LEE BELL, JR.	N
TMK9900530	19991015	20080804	DESIGN	TAK YUEN CORPORATION	N
TMK9900531	19991015	20031207	PHAT FARM	PHAT FASHIONS LLC	N
TMK9900532	19991015	20040208	PHAT THREADS	PHAT FASHIONS LLC	N
TMK9900533	19991015	20090629	MISCELLANEOUS DESIGN (BULLS HEAD)	PHAT FASHIONS LLC	N
TMK9900534	19991015	20090824	MISCELLANEOUS DESIGN (BULLS HEAD)	PHAT FASHIONS LLC	N
TMK9900535	19991015	20090629	MISCELLANEOUS DESIGN (SHADED BULLS HEAD)	PHAT FASHIONS LLC	N
TMK9900536	19991015	20090831	MISCELLANEOUS DESIGN (SHADED BULLS HEAD)	PHAT FASHIONS LLC	N
TMK9900537	19991015	20090302	STORE21	DATA VANTAGE	N
TMK9900538	19991015	20090629	PHAT FARM AND DESIGN	PHAT FASHIONS LLC	N
TMK9900539	19991015	20090824	PHAT FARM AND DESIGN	PHAT FASHIONS LLC	N
TMK9900540	19991015	20090420	BABY PHAT	PHAT FASHIONS LLC	N
TMK9900541	19991015	20090202	PF129 AND DESIGN	PHAT FASHIONS LLC	N
TMK9900542	19991015	20090112	ALL CITY	PHAT FASHIONS LLC	N
TMK9900543	19991015	20090223	SEIDENGANG	SEIDENGANG DESIGNS LTD.	N
TMK9900544	19991015	20090406	HEMPWORLD	HEMPWORLD, INC.	N
TMK9900545	19991015	20080818	SUPER HARVEST	TAK YUEN CORPORATION	N
TMK9900546	19991015	20011105	DESIGN	H & N FISH CO.	Y
TMK9900547	19991015	20090126	SOFTIA	ERIC JAVITS INC.	N
TMK9900548	19991018	20090601	DESIGN OF A CIGAR	NADIM KHOURI KLINK	N
TMK9900549	19991018	20071021	NEXTEC	NEXTEC APPLICATIONS, INC	N
TMK9900550	19991021	20050725	ESSENDI	FAR OUT EAST, LTD.	N
TMK9900551	19991021	20080317	PREMIUM	PREMIUM FLOWERS CORPORA..ON	N
TMK9900552	19991021	20090427	DIABOLO	MONROVIA NURSERY COMPANY	N
TMK9900553	19991021	20090202	FROSTY	MONROVIA NURSERY COMPANY	N
TMK9900554	19991021	20090202	EASY EATIN (AND DESIGN)	ON-COR FROZEN FOODS, INC.	N
TMK9900555	19991021	20060813	THREE-LEAF PLANT INSIDE A GLOBE	HACHI JO ISLAND CORPORATION	N
TMK9900556	19991021	20060813	THREE-LEAF PLANT INSIDE A GLOBE	HACHI JO ISLAND CORPORATION	N
TMK9900557	19991021	20061217	GREEN TOMORROW AND CHINESE SYMBOLS	HACHI JO ISLAND CORPORATION	N
TMK9900558	19991021	20070527	ASHITABA AND PER CENT WITH DESIGN	HACHI JO ISLAND CORPORATION	N
TMK9900559	19991021	20080714	CHINESE SYMBOLS	HACHI JO ISLAND CORPORATION	N
TMK9900560	19991021	20090731	MISCELLANEOUS DESIGN	STANT MANUFACTURING, INC.	N
TMK9900561	19991022	20090126	BOTTLE EXTREME A	BULGARI S.P.A.	N
TMK9900562	19991022	20090302	COREV	COREV INC.	N
TMK9900563	19991022	20090302	MARKET FRESH (STYLIZED LETTERING)	TEXAS COFFEE COMPANY INC.	N

11/03/99
07:40:45

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN OCTOBER 1999

PAGE 3
DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK9900564	19991026	20081229	PEDAL-GO	BENJAMIN LEITNER	N
TMK9900565	19991027	20060511	MARLBORO LIGHTS	PHILIP MORRIS INCORPORATED	N
TMK9900566	19991027	20090811	ORANGE CRUSH	CADBURY BEVERAGES B.V.	N
TMK9900567	19991027	20090727	SMART	A.L.S. INDUSTRIES INC.	N
TMK9900568	19991027	20080912	DESIGN ON SHOE	TRETORN AKTIEBOLAG	N
TMK9900569	19991027	20080922	LE SUIT	KASPER A.S.L. LTD.	N
TMK9900570	19991027	20060603	ALBERT NIPON	KASPER A.S.L. LTD.	N
TMK9900571	19991027	20060603	ALBERT NIPON	KASPER A.S.L. LTD.	N
TMK9900572	19991028	20090323	CATEPILLAR AND DESIGN	CATERPILLAR INC.	N
TMK9900573	19991028	20050620	POST NO BILLS	POST NO BILLS INC.	N
TMK9900574	19991028	20050418	POST NO BILLS	POST NO BILLS INC.	N
TMK9900575	19991029	20090420	VISUAL THUNDER	MUDDY SHOES SOFTWARE LLC.	N
TMK9900576	19991029	20091010	HP02	WOLVERINE WORLD WIDE INC.	N

SUBTOTAL RECORDATION TYPE 71

TOTAL RECORDATIONS ADDED THIS MONTH 108

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 24, 1999.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF BAGS NOT DESIGNED FOR PROLONGED USE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of and treatment relating to tariff classification of plastic bags.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of plastic bags, to revoke any treatment previously accorded by Customs to substantially identical merchandise, and to consider the thickness of plastic sheeting as a factor in the classification of bags, sacks, or pouches composed of clear, unembossed, polyvinyl chloride (PVC) plastic sheeting, of a kind both sold at retail on their own merits and sold at retail as packaging with specific contents. Customs will consider the fact that the plastic sheeting which comprises such articles measures less than 4 mils in thickness, to be generally indicative of a bag that is not designed for prolonged use.

DATE: Comments must be received on or before January 7, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textile Branch (202) 927–2302.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that, in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of bags, sacks, or pouches essentially composed of clear, unembossed, PVC plastic sheeting. Although in this notice Customs is specifically referring to one ruling, that being New York Ruling Letter (NY) D80975, this notice covers any rulings relating to the specific issue of tariff classification set forth in NY D80975, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issue subject to this notice, should advise Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by the Customs Service for substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar issue, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in the classification of substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise, or of a specif-

ic ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision on this notice.

In NY D80975, issued September 9, 1998 (set forth as "Attachment A" to this document), four containers identified as "display bags" were classified in subheading 4202.92.4500, HTSUSA, the provision for "Trunks * * * traveling bags, toiletry bags * * * and similar containers * * *: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other." Due to the presence of certain features on one of the four bags (hereinafter identified as item number one), it is now Customs position that this article is not designed for prolonged use as a traveling bag or toiletry bag that is classifiable under heading 4202, HTSUSA.

Sample item number one consists of a bag or pouch which resembles an envelope. The bag is essentially composed of clear, unembossed, PVC plastic sheeting. The item measures approximately 12 inches in width by 6½ inches in height, and the plastic sheeting material measures approximately 9.5 thousandths of an inch (9.5 mils) in thickness. Item number one has a flap with a metal snap closure. The article also has a top center cutout (which measures approximately 2 inches in length by ¼ inch in width) through which a flimsy plastic hanger protrudes. A paperboard card which advertises the "Wonderbra® convertible backless bra" is included in the envelope (as an indication of contents to be added after importation).

The thickness of the bag's clear, unembossed, PVC plastic sheeting measures 4 mils or more in thickness, which Customs has considered in the case of garment bags to be generally indicative of a construction that is designed for prolonged use. The presence of the container's top center cutout and plastic hanger, however, indicates that item number one is a container that is designed to hold and display goods that are hung on a rack for sale at retail. A clear, unembossed, PVC plastic container which features such a cutout and includes a flimsy plastic hanger is not of a kind normally sold at retail on its own merits. Considering all of the above, it is therefore Customs position that item number one is not designed for prolonged use (i.e., for use after the original contents with which it is sold at retail have been removed for consumption). The article is properly classified in subheading 3923.29.0000, HTSUSA, the provision for "Articles for the conveyance or packing of goods, of plastics * * *: Sacks and bags (including cones): Of other plastics."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY D80975, and any other ruling not specifically identified which involves identical or substantially identical merchandise, to reflect the proper classification of item number one according to the analysis in Proposed Headquarters Ruling Letter (HQ) 962363, set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment that Customs may have previous-

ly accorded to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 23, 1999.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, September 9, 1998.

CLA–2–42:RR:NC:TA:341 D80975
Category: Classification
Tariff No. 4202.92.4500

MS. ROBERTA M. YOUNG
SOUTHERN OVERSEAS
P.O. 35213
Greensboro, NC 27425

Re: The tariff classification of travel/toiletry bags from China.

DEAR MS. YOUNG:

In your letter dated August 19, 1998, on behalf of The Murphy Group, Inc., you requested a tariff classification ruling for travel/toiletry bags.

You have submitted four samples, identified as "display bags", which are articles of a class or kind similar to the travel and toiletry bags of Heading 4202, HTSUSA. They are all manufactured of an outer surface of PVC plastic sheeting. Their size ranges from approximately 7″ x 3″ x 2″ to 12″ x 7″. They are secured by means of a zippered, snap, hook and loop and/or drawstring closure. Your samples are being returned as you requested.

The applicable subheading for the travel/toiletry bags of PVC plastic sheeting will be 4202.92.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports and similar bags, with outer surface of sheeting of plastic, other. The rate of duty will be 20 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212–466–5893.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 962363 GGD
Category: Classification
Tariff No. 3923.29.0000 and 4202.92.4500

JASON M. WAITE, ESQUIRE
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN, LLP
303 Peachtree Street, N.E.
Atlanta, GA 30308

Re: Modification of New York Ruling Letter (NY) D80975; "Display Bags;" Clear, Unembossed, PVC Retail Packaging Less than 4 Mils Thick Not Designed for Prolonged Use; Odd Shapes, Cutouts, Hangers, Tabs, Indicative of Single Use.

DEAR MR. WAITE:

In NY D80975, issued September 9, 1998, to Southern Overseas on behalf of The Murphy Group, Inc., Customs classified four articles described as "display bags" in subheading 4202.92.4500, HTSUSA, the provision for "Trunks * * * traveling bags, toiletry bags * * * and similar containers * * *: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other." You subsequently requested reconsideration of the ruling. We have reviewed NY D80975 and, with respect to one of the bags, have found it to be in error. Therefore, this ruling modifies NY D80975.

Facts:

In your letter dated November 12, 1998, requesting reconsideration of NY D80975, you take issue with Customs classification of two of the four bags (hereinafter identified as item numbers one and four), conceding that the other two bags are properly classified in subheading 4202.92.4500, HTSUSA. The two bags at issue are imported without contents and are claimed to be ordinary vinyl packaging materials that are included (at no cost) with the purchase of the article or articles they eventually will contain when sold at retail.

Sample item number one is a bag or pouch which resembles an envelope. The bag is essentially composed of clear, unembossed, polyvinyl chloride (PVC) plastic sheeting. The item measures approximately 12 inches in width by 6½ inches in height, and the plastic sheeting material measures approximately 9.5 thousandths of an inch (9.5 mils) in thickness. Item number one features a flap with a metal snap closure. The article also has a top center cutout (which measures approximately 2 inches in length by ¼ inch in width) through which a flimsy plastic hanger protrudes. A paperboard card which advertises the "Wonderbra® convertible backless bra" is included in the envelope (as an indication of the merchandise to be added after importation).

Sample item number four is a cylindrically-shaped, drawstring utility bag that is essentially composed of clear, unembossed, PVC plastic sheeting. The item resembles a small duffel bag and measures approximately 7¼ inches in height by 3 inches in diameter. The plastic sheeting material measures approximately 7.2 mils in thickness. Item number four features a top that may be drawn closed by means of a braided cord which passes through eight eyelets. A stitched side seam extends the full height of the bag and the bag's top and bottom have stitched PVC edging.

Issue:

Whether the articles are classified under heading 4202, HTSUSA, which covers, in part, traveling bags, toiletry bags, and similar containers; or under heading 3923, HTSUSA, as articles for the conveyance or packing of goods, of plastics.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facil-

itate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Among other merchandise, chapter 42, HTSUSA, covers travel goods, handbags and similar containers. Among other items, heading 4202 provides for "* * * traveling bags, toiletry bags * * * and similar containers." The exemplars named in heading 4202 have in common the purpose of organizing, storing, protecting, and carrying various items. In pertinent part, legal note 2(A)(a) to chapter 42, HTSUSA, states:

> "* * * heading 4202 does not cover:
>
> Bags made of sheeting of plastics, whether or not printed, with handles, **not designed for prolonged use** (heading 3923) (Emphasis added.)

Chapter 39, HTSUSA, covers plastics and articles thereof. In pertinent part, note 2(ij) to chapter 39, HTSUSA, states that "[t]his chapter does not cover * * * trunks, suitcases, handbags or other containers of heading 4202." Among other merchandise, heading 3923, HTSUSA, covers "Articles for the conveyance or packing of goods, of plastics. * * *" The EN to heading 3923 indicate that the heading covers all articles of plastics commonly used for the packing or conveyance of all kinds of products, including sacks and bags. The EN also state that the heading excludes containers of heading 4202.

You essentially contend that, because item numbers one and four are designed, intended, and likely to be used principally as retail packaging for unique products, they are not designed for prolonged use and are excluded from classification under heading 4202, HTSUSA. You cite to several Headquarters Ruling Letters (HQ), including HQ 960009 and HQ 959679, both of which concern the issue of whether certain containers composed of PVC plastic sheeting are designed for prolonged use. Although intended use is mentioned in each of the cited rulings, you suggest that Customs has based these and other classification determinations upon whether plastic bags that are capable of reuse are **intended** to be reused. We do not agree.

Customs is often presented with other subjective criteria to consider, and may weigh the uncertain relevance of whether a bag's seams are heat-sealed or sewn; whether eyelet holes are reinforced with metal or heat-sealed grommets; whether a bag has drawstring, snap, or zipper closures; or features handles, piping, printing, opaque sides; etc. While viewing certain features such as hangers, hanger holes or cutouts, plastic tabs with holes for hanging display, cutouts permitting pre-purchase handling of contents, odd/awkward shapes, etc., as indications that retail packaging bags are not designed for prolonged use, Customs has found that determinations as to whether such plastic bags are "not designed for prolonged use" are properly based upon whether a bag 1) is of a kind normally sold at retail on its own merits as a traveling or toiletry bag, and 2) is of a kind normally sold at retail as packaging with contents.

These were the significant factors in HQ 960009, issued October 16, 1997, in which this office classified several bags under heading 4202, finding that "* * * the bags are not of a kind normally used in the packaging of toiletries/cosmetics and are of a kind sold at retail on their own merits as travel or toiletry bags." We looked to the same determining factors in HQ 959679, issued May 8, 1997, and found that "[t]he bag is of a kind sold at retail on its own merits. * * * It is similar to PVC travel bags either sold on their own or with other personal effects, cosmetics or toiletries. It is not of a disposable kind normally used to temporarily hold its contents."

In order to more objectively distinguish bags of clear, unembossed, PVC plastic sheeting that are not designed for prolonged use from those that are, Customs will consider the thickness of a bag's plastic sheeting as a factor in the classification of bags of a kind both sold on their own merits and sold as packaging. Customs has long classified under heading 4202, garment bags composed of **embossed** vinyl or PVC plastic sheeting which measures four mils or more in thickness, finding that such thickness usually denotes a durably constructed article that is designed for prolonged use and travel. Customs has also determined that garment bags composed of embossed vinyl or PVC plastic sheeting which measures less than four mils in thickness are generally less durable and not designed for prolonged use. Those bags have been classified under headings 3923 and 3924, HTSUSA. See HQ 962225, issued May 21, 1999, HQ 961092, issued March 24, 1998, HQ 960411, issued October 7, 1997, HQ 955470, issued February 17, 1994, and HQ 082463, issued September 25, 1989. Since embossed vinyl and PVC garment bags are not normally used to **display** articles sold at retail, Customs does not generally consider the features indicating that clear PVC bags are not designed for prolonged use (hangers, hanger holes, cutouts, etc.) to be applicable to garment bags.

Although the Customs laboratory has concluded that the formula recommended by the American Society for Testing and Materials (ASTM) D 1593, "Specification for Nonrigid Vinyl Chloride Plastic Sheeting," must be used to determine the thickness of **embossed** plastic sheeting, the laboratory has further advised that for routine testing (e.g., determining the thickness of **unembossed** PVC plastic sheeting), standard dead weight methods may be used. See ASTM D 1593 "Test Methods" section 10.1.3.

Therefore, to determine the classification of bags, sacks, or pouches that are composed of clear, unembossed, PVC plastic sheeting, Customs will consider plastic sheeting which measures less than 4 mils in thickness to be generally indicative of an article that is not designed for prolonged use. Customs will also consider plastic sheeting which measures 4 mils or greater in thickness to be generally indicative of a container that is designed for prolonged use to carry personal effects (ABSENT such single use indicators as hangers, cutouts, tabs, odd shapes, etc. noted above OR the fact that a bag is not of a kind normally sold at retail on its own merits).

In this case, despite the fact that the PVC plastic sheeting of item number one measures 9.5 mils in thickness, the presence of the top center cutout and flimsy plastic hanger indicates that the bag is a container for goods that will be displayed on a rack for sale at retail. Although the thickness of the plastic sheeting indicates durability, the package is designed to withstand any number and variety of pre-sale manipulations by shoppers, and not for prolonged use after sale. If imported separately, we would consider the plastic hanger itself to be an article for the conveyance or packing of goods. In this case, the hanger is designed to suspend the bag with which it is imported and help to display a product. The hanger and bag components would not normally be offered for sale in separate parts. Together they comprise a composite article, the essential character of which is imparted by the bag component. The complete "display bag" is not of a kind normally sold at retail on its own merits, but is of a kind that is sold at retail with specific contents. Item number one is not designed for prolonged use (after its original contents have been removed for consumption), and it is therefore excluded from heading 4202 by note 2A(a) to chapter 42, HTSUSA. Item number one is properly classified in subheading 3923.29.0000, HTSUSA.

Although item number four may be intended merely for use as unique retail packaging to favorably present a product, enhance the likelihood of its sale, and carry it from store to home, the bag is of a kind normally sold at retail on its own merits as a traveling or toiletry bag. The item is not of a kind normally sold at retail as packaging with its contents and it is substantially constructed of plastic sheeting which measures 7.2 mils in thickness. Unlike item number one, this bag has no cutout, hanger, or other feature which would indicate that the bag is not designed for prolonged use. We find that item number four is similar to the containers of heading 4202, HTSUSA, and that it is classifiable thereunder. The article is thus precluded from classification under heading 3923 by note 2(ij) to chapter 39, HTSUSA. Item number four is classified in subheading 4202.92.4500, HTSUSA.

Holding:

The "display bag" identified as item number one is classified in subheading 3923.29.0000, HTSUSA, the provision for "Articles for the conveyance or packing of goods, of plastics * * *: Sacks and bags (including cones): Of other plastics." The general column one duty rate is 3 percent ad valorem.

The "display bag" identified as item number four is classified in subheading 4202.92.4500, HTSUSA, the provision for "Trunks * * * traveling bags, toiletry bags * * * and similar containers * * *: Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: Other." The general column one duty rate is 20 percent ad valorem.

NY D80975, issued September 9, 1998, is hereby modified with respect to the classification of item number one.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TITANIUM BRIQUETTES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of titanium briquettes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of titanium briquettes, under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before January 7, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Michael McManus, General Classification Branch (202) 927–2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke rulings pertaining to the tariff classification of titanium briquettes. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) C82798, dated January 5, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY C82798, Customs ruled that titanium briquettes were classified in subheading 8108.90.3060, HTSUS, as other articles of titanium. NY C82798 is set forth as Attachment A to this notice. After review and consideration of heading 8108, HTSUS, and its subheadings, we are of the opinion that titanium briquettes are classified as unwrought titanium rather than as articles of titanium.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY C82798, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HRL) 962572 (*see* Attachment B to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 17, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, January 5, 1998.

CLA–2–81:RR:NC:1:115 C82798
Category: Classification
Tariff No. 8108.90.3060

MR. JAMES F. MORGAN
F.W. MYERS & CO., INC.
2600 Cabover Drive, Suite A
Hanover, MD 21076

Re: The tariff classification of titanium tablets and briklets from Germany.

DEAR MR. MORGAN:

In your letter dated December 11, 1997, you requested a tariff classification ruling, on behalf of SKW Metals and Alloys, Inc., Amherst, NY.

The subject items are described as follows:

a) *Hoesch titanium "Ti 98" tablets*—which are high-concentrated alloying additions for adjusting the titanium content in iron or steel melts. They are added to a converter for a steel melt or into a furnace for an iron melt. Each tablet weighs one pound.

b) *Hoesch titanium "Ti 98" briklets*—which are ideally suited for adding the required titanium into the iron or steel melt. These products are similar to the above described tablets, except for its weight which is 0.25 pounds per briklet.

The applicable subheading for the "Ti 98" tablets and briklets will be 8108.90.30.60, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of titanium: other. The duty rate will be 5.5% ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212–466–5487.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 962572 MGM
Category: Classification
Tariff No. 8108.10.5090

MR. JAMES F. MORGAN
F.W. MYERS & CO., INC.
2600 Cabover Drive, Suite A
Hanover, MD 21076

Re: Titanium Tablets and Briklets; Revocation of NY C82798.

DEAR MR. MORGAN:

This office has recently become aware of conflicting ruling letters issued by Customs National Commodity Specialist Division, New York, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of titanium tablets and briklets. New York Ruling Letter (NY) A89686, dated January 13, 1997, to SKW Metals and

Alloys, Inc., classified such merchandise in subheading 8108.10.5090, HTSUS, as unwrought titanium. However NY C82798, issued to you on January 5, 1998, on behalf of SKW Metals and Alloys, Inc., classified identical merchandise in subheading 8108.90.3060, HTSUS, as other articles of titanium.

Facts:

The merchandise consists of titanium tablets and briklets. The titanium tablets are formed by pressing together grains of 98% or greater titanium, 1–2% aluminum and a small amount of flux (a substance which promotes the fusing of metals) into tablets or briquettes approximately 3.5 in. (90 mm) in diameter and 1.1 in. (29 mm) in height. The tablets weigh one pound each. The titanium briklets are formed in a similar manner, however they have one-fourth the mass of the tablets. Both the tablets and briklets are used for adding a known quantity of titanium to an iron or steel melt.

Customs Laboratory Reports (2–97–20405–001, dated Dec. 30, 1996; 2–97–20404–001, dated Dec. 30, 1996), prepared in conjunction with NY A89686, describe the tablets and briklets as "a metal tablet approximately 3½ inches in diameter is composed essentially of unwrought titanium grains compacted together," and "a small metal briquette approximately 1-5/8 inch in diameter, is composed essentially of unwrought titanium grains compacted together," respectively.

Issue:

Are the titanium tablets and briklets "unwrought" titanium?

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See,* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

Both NY A89686 and NY C82798 classified the titanium tablets and briklets in heading 8108, HTSUS. This heading provides as follows (ten-digit statistical breakouts omitted):

8108	Titanium and articles thereof, including waste and scrap:
8108.10	Unwrought titanium; waste and scrap; powders:
8108.10.10	Waste and scrap
8108.10.50	Other:
8108.90	Other:
8108.90.30	Articles of titanium
8108.90.60	Other

NY A89686 classified the titanium tablets and briklets under the provision for unwrought titanium, while NY C82798 classified the merchandise as "other" than unwrought titanium. The term "unwrought" is defined in the tariff as "metal, whether or not refined, in the form of ingots, blocks, lumps, billets, cakes, slabs, pigs, cathodes, anodes, briquettes, cubes, sticks, grains, sponge, pellets, flattened pellets, rounds, rondelles, shot and similar manufactured primary forms. * * *" *See* Additional U.S. Note 1, Section XV, HTSUS. This Note has been interpreted by the Court of International Trade to refer to "forms that have undergone some processing but must undergo further processing before they appear in an eventual final product." *Anval Nyby Powder AB, v. U.S.*, 20 CIT 608, 616, 927 FSupp 463 (1996). In *Anval Nyby*, the court held that cobalt alloy powder was "unwrought" as it undergoes further processing before it appears in a final product. *Anval Nyby* 20 CIT at 616–7. Similarly, the titanium tablets and briklets are not end products in

themselves but rather are intended to be added to a solution of metals and then fabricated into an end product.

One might argue that the instant case differs from *Anval Nyby* as that case involved simple metal alloy powder while the instant merchandise is pressed grains of metal and that this additional step, pressing into tablet or briklet form, makes the instant merchandise more than "unwrought." However, both the terms "cakes" and "briquettes" are listed as examplars of "unwrought" primary forms. "Briquettes * * * are made of compressed powders," *Anval Nyby* 20 CIT at 615, while "cake" is defined as "a block of compacted or congealed matter," *Webster's Ninth New Collegiate Dictionary*. Thus, in the same manner that "cakes" and "briquettes" are included within the list of "unwrought" forms, the titanium tablets and briklets are classified as "unwrought" metal despite having been pressed into solid form.

Holding:

Titanium tablets and briklets are classified in subheading 8108.10.5090, HTSUS. NY C82798 is revoked. NY A89686 is affirmed.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TARIFF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A CPU CHIP

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and revocation of treatment relating to tariff classification of a CPU chip.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of a central processing unit integrated circuit (CPU chip) under the Harmonized Tariff Schedule of the United States (HTSUS), and revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before January 7, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Gail A. Hamill, General Classification Branch, (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of a CPU chip. Although in this notice Customs is specifically referring to one ruling, NY A88554, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise a rebuttable presumption of a lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY A88554, dated November 12, 1996, set forth as Attachment A to this document, Customs classified a CPU chip in a tape carrier package modified for pin mounting, under subheading 8542.19.80, Harmonized Tariff Schedule of the United States (HTSUS), which provides for

monolithic digital integrated circuits; other, including circuits obtained by a combination of bipolar and MOS technologies (BIMOS technology); other.

It is now Customs position that the modified CPU chip is properly classified under subheading 8473.30.10, HTSUS, as a part of the machines of heading 8471; not incorporating a cathode ray tube; printed circuit assemblies. We now believe that the Intel PP 100 CPU chip at issue was advanced on modification to a state beyond what heading 8542 and note 5(B) to chapter 85, HTSUS, contemplate. The modified package contained a second layer of circuitry that was designed, among other things, to allow it to be mounted on a "motherboard". It does not contain the main storage or control elements necessary to meet the terms of chapter 84 note 5(A)(a) as an automatic data processing machine, and is classifiable as a part thereof in heading 8473, HTSUS.

Customs intends to revoke NY A88554 and any other ruling not specifically identified, in order to classify this merchandise under subheading 8473.30.10, HTSUS. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received. Proposed HQ 963262, revoking NY A88554, is set forth as Attachment B to this document.

Dated: November 18, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, November 12, 1996.

CLA–2–85:RR:NC:1:109 A88554
Category: Classification
Tariff No. 8542.19.8078

MR. ALEX KANG
WTS CUSTOMS BROKERAGE
5730 W. Manchester Blvd., Suite 280
Los Angeles, CA 90045

Re: The tariff classification of the Intel PP 100 CPU in a Tape Carrier Package modified for pin mounting in Taiwan.

DEAR MR. KANG:

In your letter dated October 8, 1996 you requested a tariff classification ruling on behalf of Associates Mega Sub-Systems Inc., d.b.a. AMS TECH, 12881 Ramona Blvd., Irwindale, CA 91706.

The merchandise is described in your letter and in information supplied by AMS TECH as an Intel PP 100 CPU that has been modified to simulate a Pin Grid Array (PGA) package. A sample was submitted. As per AMS TECH the Intel CPU is currently manufactured in the United States, and the modifications are being done in Taiwan. The Intel CPU is in a Tape Carrier Package (TCP). This type of packaging is designed for notebook type applications. The Intel CPU offers the following features: small dimensions, thin profile, surface-mount technology (SMT), superior thermal resistance characteristics, reduced power consumption, and the SL enhanced feature set. The CPU is being modified to simulate a Pin Grid Array package for use on standard mother boards in desk top type applications. The Intel CPU Tape Carrier Package has been fitted into the center of a two inch square printed circuit board (PCB). The board contains the pins to simulate the PGA configuration. The PCB provides the electrical connection between the leads on the TCP and the pins. There are also ten capacitors mounted on the PCB. The function of the capacitors is to provide power balance. They are not necessary for the functioning of the chip, however, the chip will last longer. The modifications made to the Intel CPU do not effect the essential character of this integrated circuit. They are meant only to adapt the package for a different type of mounting, and to protect the chip from power surges.

The applicable subheading for the Intel PP 100 CPU in a Tape Carrier Package modified for pin mounting will be 8542.19.8078, Harmonized Tariff Schedule of the United States (HTS), which provides for [m]onolithic digital integrated circuits: [o]ther, including circuits obtained by a combination of bipolar and MOS technologies (BIMOS technology): [o]ther: [o]ther, silicon: [c]omplementary BIMOS (BICMOS): [o]ther, including logic. The rate of duty will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Eileen S. Kaplan at 212–466–5673.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963262 gah
Category: Classification
Tariff No. 8473.30.1000

MR. ALEX KANG
WTS CUSTOMS BROKERAGE
5730 W. Manchester Blvd., Suite 280
Los Angeles, CA 90045

Re: Revocation of NY A88554, Intel PP 100 CPU in tape carrier package modified for pin mounting.

DEAR MR. KANG:

This is in regards to a New York (NY) ruling A88554, issued to you on behalf of Associates Mega Sub-Systems, Inc., d.b.a. AMS Tech, on November 12, 1996. We have reviewed this ruling and have determined that it is incorrect. Therefore, this ruling revokes NY A88554 and sets forth the correct classification for the central processing unit integrated circuit (CPU chip).

Facts:

The merchandise at issue is described in your letter of October 8, 1996, and in information supplied by AMS TECH as an Intel PP 100 CPU, modified to simulate a Pin Grid Array

(PGA) package. A sample was submitted. This Intel CPU was manufactured in the United States, and the modifications were being done in Taiwan. The Intel CPU is in a Tape Carrier Package (TCP). This type of packaging is designed for "notebook" applications.

The Intel CPU offers the following features: small dimensions, thin profile, surface-mount technology (SMT), superior thermal resistance characteristics, reduced power consumption, and the SL enhanced feature set. The basic CPU is a monolithic circuit that was modified to simulate a Pin Grid Array package for use on standard "motherboards" in desk top applications. The Intel CPU Tape Carrier Package has been fitted into the center of a two inch square printed circuit board (PCB). The board contains the pins to simulate the PGA configuration. The PCB provides the electrical connection between the leads on the TCP and the pins. There are also ten capacitors mounted on the PCB. The function of the capacitors is to provide power balance. While they are not necessary for the functioning of the chip, the capacitors extend its life. The modifications made to the Intel CPU adapt the package for a different type of mounting, and protect the chip from power surges.

In NY A88554, Customs classified this integrated circuit as a monolithic digital integrated circuit in subheading 8542.19.80, HTSUS.

Issue:

Is the CPU chip classified in subheading 8473.20.10, HTSUS, which provides for parts and accessories of the machines of heading 8471, not incorporating a cathode ray tube; printed circuit assemblies, or in subheading 8542.19.80, HTSUS, which provides for monolithic digital integrated circuits; other, including circuits obtained by a combination of bipolar and MOS technologies (BIMOS technology); other?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs.

Heading 8542 provides for electronic integrated circuits and microassemblies. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). In NY A88554 Customs found that the instant CPU chip met the terms of the heading 8542 EN (I)(1)(i) which states in part that:

> Monolithic integrated circuits may be presented:
>
> (i) mounted, i.e., with their terminals or leads, whether or not encased in ceramic, metal or plastics. The casings may be cylindrical, in the form of parallelepipeds, etc.

On further reflection, we now believe that the Intel PP 100 CPU was advanced on modification to a state beyond what heading 8542 contemplates. The CPU chip, when exported to Taiwan for modification, was a monolithic circuit already mounted in a case with terminals or leads. In Taiwan, the CPU was modified so that it could be surface mounted through a pin grid array (PGA) package onto a standard "motherboard". Specifically, it was fitted into the center of a two-inch square printed circuit board. Ten capacitors were mounted on the printed circuit board. Pins were attached to the board. Thus, the new package presented contained, in effect, a second layer of circuitry that was designed to allow it to be mounted on a motherboard, balance the power within the entire package, and protect it from power surges.

Note 5(B)(b) states that:

> Hybrid integrated circuits in which passive elements (resistors, capacitors, interconnections, etc.), obtained by thin- or thick-film technology, and active elements (diodes, transistors, monolithic integrated circuits, etc.), obtained by semiconductor technology, are combined to all intents and purposes indivisibly, on a single insulating substrate (glass, ceramic, etc.). These circuits may also include discrete components.

The modifications do not meet the requirements of note 5(B)(b) to chapter 85 for the new package to be classified as a hybrid integrated circuit due to the fact that the microcircuit is not built up on an insulating substrate on which a thin or thick film circuit has been for-

med. *See* heading 8542 EN (I)(2) concerning hybrid integrated circuits. The modified CPU chip has multiple electrical functions, and is therefore outside the scope of the term microassemblies as it appears in the heading text, and as it is defined in its EN (II). Finally, the EN to heading 8542 directs that the heading excludes:

> assemblies formed by mounting one or more discrete components on a support formed, for example, by a printed circuit and assemblies formed by adding to an electronic microcircuit either one or more other microcircuits of the same or of different types or one or more other devices, such as diodes, transformers, resistors.

The basic CPU was combined with ten capacitors on a second printed circuit board. Thus, the Intel PP 100 CPU meets the above description, and is not classifiable within heading 8542.

Heading 8471 provides for automatic data processing machines, among other things. Note 5(A)(a) defines automatic data processing machines to mean, in pertinent part:

> (a) Digital machines, capable of (1) storing the processing program or programs and at least the data immediately necessary for the execution of the program; (2) being freely programmed in accordance with the requirements of the user; (3) performing arithmetical computations specified by the user; and, (4) executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run;

The Intel PP100 CPU chip does not contain the main storage (memory) or control elements necessary to meet the terms of chapter 84 note 5(A)(a) as an automatic data processing machine, classifiable in heading 8471. *See* the EN (A) to heading 8471, which describes the processing capabilities of a complete central processing unit.

Heading 8473 provides for parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with the machines of headings 8469 to 8472. The CPU chip was designed for incorporation on a "notebook motherboard". Following note 2(b) to section XVI, the modified CPU chip is a part suitable for use solely or principally with the machines of heading 8471, and is classifiable with those machines. It therefore meets the terms for classification in heading 8473. We have classified devices similarly lacking the complete note 5(A)(a) capabilities as parts of ADP machines in heading 8473. *See, e.g.*, HQ 953403 and 956993, both dated March 28, 1995. In agreement with the legal texts and this precedent, Customs believes the Intel PP 100 CPU chip is classifiable as a part of an ADP machine.

Holding:

Intel PP 100 CPU, modified to simulate a Pin Grid Array (PGA) package, is classified in subheading 8473.30.1000, which provides for parts and accessories of the machines of heading 8471, not incorporating a cathode ray tube; printed circuit assemblies, duty free. NY A88554 is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION/REVOCATION OF RULING LETTERS AND REVOCATION OF TARIFF TREATMENT RELATING TO TARIFF CLASSIFICATION OF WIDE AREA NETWORK (WAN) EQUIPMENT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification/revocation of tariff classification ruling letters and revocation of treatment relating to tariff classification of wide area network (WAN) equipment.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to modify/revoke 19 ruling letters pertaining to the tariff classification of wide area network (WAN) equipment under the Harmonized Tariff Schedule of the United States (HTSUS), and revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before January 7, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Robert F. Altneu, General Classification Branch, (202) 927–2403.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchan-

dise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to modify/revoke ruling letters pertaining to the tariff classification of WAN equipment. Although in this notice Customs is specifically referring to 19 rulings [see Attachments A through S], this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the 19 identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise a rebuttable presumption of a lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In the 19 rulings, Customs classified certain WAN equipment under subheading 8471.99.15, Harmonized Tariff Schedule of the United States (HTSUS), which provides for automatic data processing (ADP) control or adapter units. The 19 rulings, labeled as Attachments A through S, are as follows: NY 801302 (August 30, 1994); NY 811909 (June 27, 1995); NY 813194 (August 2, 1995); NY 815560 (November 2, 1995); NY 815902 (October 20, 1995); NY 818275 (January 23, 1996); NY 885967 (May 14, 1993); NY A80132 (February 13, 1996); HQ 951570 (October 16, 1992); HQ 952627 (October 13, 1992); HQ 952628 (October 13, 1992); HQ 954059 (July 16, 1993); HQ 954093 (July 22, 1993); HQ 954249 (August 9, 1993); HQ 955907 (July 6, 1994); HQ 956406 (September 26, 1994); HQ 952631 (October 13, 1992); HQ 961364 (June 30, 1998); HQ 952812 (December 30, 1992).

It is now Customs position that WAN equipment does not meet the definition of an ADP unit as required by Legal Note 5(B) to Chapter 84, HTSUS, because WAN equipment is not connecting ADP machines or units with one another, but is connecting lines to allow transmission of data or packets over a line system from one location to another. This

proposal does not affect how Customs classifies local area network ("LAN") equipment.

Customs intends to modify/revoke the 19 rulings and any other ruling not specifically identified, in order to classify this merchandise under subheading 8517.50.90, HTSUS, which provides for other telegraphic apparatus for digital line systems. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received. Proposed rulings, HQ 963234, HQ 963235, HQ 963236, HQ 963238, HQ 963239, HQ 963240, HQ 963241, HQ 963242, HQ 963243, HQ 963244, HQ 963245, HQ 963246, HQ 963247, HQ 963248, HQ 963249, HQ 963250, HQ 963251, HQ 963252, and HQ 963253, modifying/revoking the 19 rulings are set forth as Attachments AA through SS to this document.

Dated: November 18, 1999.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, August 30, 1994.

CLA–2–84:S:N:N1:110 801302
Category: Classification
Tariff No. 8471.99.1500

MS. SANDRA SWANSON
ALROD INTERNATIONAL, INC.
880 Stanton Road
Burlingame, CA 94010

Re: The tariff classification of networking adapters from France.

DEAR MS. SWANSON:

In your letter dated August 15, 1994, on behalf of Transware International, you requested a tariff classification ruling. The merchandise under consideration involves various networking apparatus. The models in question are known as the "EtherWay", "SerialWay", "InterTalk", and "TransTalk". These devices are used to connect automatic data processing (ADP) computers to their peripherals, such as laser printers. This apparatus also connects other units such as plotters and modems.

The "EtherWay" extends the "AppleTalk" network to the TCP/IP and DECnet. Optimized to perform complex multiprotocol routing, "EtherWay" permits Telnet access to "UNIX" hosts, access to files on Vans with "AppleShare", and printing anywhere on the network. The "SerialWay" permits the sharing of unlimited Serial Devices over LocalTalk and Ethernet. It functions by plugging it into printers, modems and plotters into "SerialWays's" RS–232 ports, and they become accessible from any "Apple Macintosh" on the network.

The "InterTalk" functions as a high-speed router for "LocalTalk", and "PhoneNet" networks by providing traffic control algorithms, and built-in Direct Memory Access (DMA). All input-output functions, and "AppleTalk" routing are performed simultaneously.

The "TransTalk" is a Wide Area Network (WAN) touter. It allows connection of Macintosh networks, as opposed to individual Macintosh computers, to ISDN, switched 56 or modems on analog phone lines. It is designed to establish transparent connections between remote "LocalTalk" networks, regardless of the connecting hardware and software used. Once a wide area network is established, all users on both networks can access and share all services.

These models are free-standing devices, and meet the definition of a "unit" of an ADP system, noting Legal Note 5 (B) to Chapter 84, HTSUS. Since these adapters control and process information exchange within the framework of a LAN system, they are principally used to interconnect the CPU to other units or ADP machines, thereby serving "control" and "adaption" functions.

The applicable subheading for the will be "Etherway", "SerialWay", "InterTalk", and the "TransTalk" networking adapters will be 8471.99.1500, Harmonized Tariff Schedule of the United States (HTS), which provides for other control or adapter units. The rate of duty will be free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, June 27, 1995.

CLA-2-84:S:N:N1:110 811909
Category: Classification
Tariff No. 8471.99.1500

MR. ANTHONY R. PRANSES
RUDOLPH MILES & SONS, INC.
4950 Gateway East
P.O. Box 11057
El Paso, TX 79983

Re: The tariff classification of computer network interfacing devices from Mexico.

DEAR MR. PRANSES:

In your letter dated June 14, 1995, on behalf of Xircom Inc., you requested a tariff classification ruling.

The merchandise under consideration involves ADP interface devices which are known as the CE-10B2-MAU, the CEM-10BT-DAA, and the PPX-03 models. These devices are terminated to conductive cable rather than being housed in a single unit.

The CE-10B2-MAU and the CEM-10BT-DAA devices provide both physical and data-link interfaces between a data network such as an Ethernet Local Area Network (LAN) or the Public Switched Telephone Network (PSTN) and a Xircom Network Interface Card (NIC) installed inside a computer. The physical and data-link interface functions include analog to digital and digital to analog data conversion, and related activities. Although the CEM-10BT-DAA does link a modem with a PSTN, it also provides other functions including signaling network status to the host computer through the attached Xircom NIC. Data transmission between the CEM-10BT-DAA and the LAN occurs through the Xircom Network Interface Card.

The model PPX–03 device performs electronic signal switching under software control. It is directly attached to a computer's parallel port interface, and facilitates the sharing of multiple peripherals such as LAN interface devices, printers, and security keys. This device includes internal digital logic that examines the parallel data stream for indication to switch channels from one port to another port.

Noting Legal Note 5(B) to Chapter 84 of the HTS, these devices appear to be principally used to connect the central processing unit to other units or ADP machines, thereby serving "control" and "adaption" functions. Please note also Headquarter's Ruling Letters 953205, 953921, and 957325 which involved similar merchandise.

The applicable subheading for the models CE–10B2–MAU, the CEM–10BT-DAA, and the model PPX–03 will be 8471.99.1500, Harmonized Tariff Schedule of the United States (HTS), which provides for control or adapter units for automatic data processing machines. The rate of duty will be free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, August 2, 1995.

CLA–2–84:S:N:N1:110 813194
Category: Classification
Tariff No. 8471.99.1500

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278–1103

Re: The tariff classification of a NetRunner Integration Router (LAN/WAN) from Malaysia.

DEAR MR. HECK:

In your letter dated July 28, 1995, on behalf of Micom Communications Corp., you requested a tariff classification ruling.

The merchandise under consideration involves a NetRunner 75E Integration Router which is basically a free standing unit that allows for multiprotocol transmissions to be sent across wide area network (WAN) lines.

This device is a high-performance IP/IPX router, with hardware data compression and central point of control. Voice digitization and compression is performed by using 20 MIPS digital signal processors (DSP) in order to reduce WAN bandwidth requirements. This multiprotocol router offers the capability to integrate data and voice/fax traffic, while minimizing overall network administrative burdens.

Each NetRunner Integration Router includes from two to five data ports for integrating legacy synchronous data (e.g. SNA, X.25, DDCMP) and legacy async data (e.g. DEC, HP, Unix) along with remote LAN traffic. The board of this unit contains a Z80– Zilog microprocessor, 1.5MB of flash EPROM for program memory, BIOS PROM, and has I/O capability. This device is approximately 17 inches in width, 4.4 inches in height, and 11.8 inches in depth, and weighs 13 pounds.

Noting Legal Note 5 (B) to Chapter 84, this router would appear to meet the definition of a "unit" of an ADP system. They control and process information exchange within the framework of a network, and are used to interconnect the CPU to other units or ADP machines, thereby serving "control" and "adaptor" functions.

The applicable subheading for the NetRunner 75E Integration Router will be 8471.99.1500, Harmonized Tariff Schedule of the United States (HTS), which provides for control or adaptor units. The rate of duty will be free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, November 2, 1995.

CLA-2-84:R:N1:110 815560
Category: Classification
Tariff No. 8471.99.1500

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278-1103

Re: The tariff classification of network servers from Malaysia.

DEAR MR. HECK:

In your letter dated September 27, 1995, on behalf of Micom Communications Corp., you requested a tariff classification ruling.

The merchandise under consideration involves four models of "Marathon Network Feeders or Nodes" which function as network servers thereby permitting business organizations to integrate their data, voice, fax and LAN traffic. These network servers are free standing units which function as private network interconnection devices within an automatic data processing (ADP) environment.

The "Marathon" 1K Data/Voice Network Feeder provides site-to-site data, voice/fax, and LAN communication. The "Marathon" 1K's feeder capabilities let it evolve into multi-site "Marathon" 10K/20K networks. It provides for one digital Wide Area Network link, up to four voice/fax channels, up to 41-asynchronous data channels, one synchronous data channel, with remote Local Area Network Bridge support.

The "Marathon" 5K Turbo Data/Voice Network Node is utilized for small integrated multi-site networks with one to three offices. It also functions as a high performance feeder into a "Marathon" 10K/20K network. The Marathon 5K Turbo provides for up to two digital Wide Area Network links, up to eight voice/fax channels, up to forty-one asynchronous data channels asynchronous data channels, up to twelve synchronous data channels, with remote Terminal Server support and Remote Local Area Network Bridge support.

The "Marathon" 10K Network Node is employed for applications with 20 to 25 remote offices. The "Marathon" 10K provides for up to four digital Wide Area Network links, up to eight voice/fax channels, up to forty-one asynchronous data channels, up to fourteen synchronous data channels, with remote Terminal Server support and remote Local Area Network Bridge support.

The "Marathon" 20K Network Node id designed for applications involving more than 25-remote offices. The "Marathon" 20K provides for up to six digital Wide Area Network links, up to eight voice/fax channels, up to forty-one asynchronous data channels, up to eighteen synchronous data channels, with remote Terminal Server support and remote Local Area Bridge support.

The physical dimensions of each of these units is approximately 17.5-inches wide, by 6.5-inches high by 12-inches deep and weights approximately 22 to 27 pounds. Noting Le-

gal Note 5)B) to Chapter 84, these devices would appear to meet the definition of a "unit" of an ADP system, and are principally used as interconnection devices. The applicable subheading for the "Marathon" 1K Network Feeder, and the "Marathon" 5K, 10K and 20K Network Nodes will be 8471.99.1500, Harmonized Tariff Schedule of the United States(HTS), which provides for other control or adapter units for use with automatic data processing machines. The rate of duty will be free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–466–5490.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, October 20, 1995.

CLA–2–84:R:N1:110 815902
Category: Classification
Tariff No. 8471.99.1500

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278–1103

Re: The tariff classification of Netrunner Integration Routers from Malaysia.

DEAR MR. HECK:

In your letter dated October 13, 1995, on behalf of Micom Communications Corp., you requested a tariff classification ruling.

The merchandise under consideration involves four models of integration routers which are basically free standing units that allow for multiprotocol transmissions to be sent across wide area network (WAN) lines. The four models include the following: Netrunner 50E data/voice internetwork feeder/router; Netrunner 100E Data/voice Internetwork Node; Netrunner 200E Integration Router, and Netrunner 500ET Integration Router.

These Netrunner units are high performance IP/IPX routers, with hardware data compression and central point of control. Voice digitization and compression is performed by using 20 MIPS digital signal processors (DSP) in order to reduce WAN bandwidth requirements. The Netrunner series is Novell certified and integrates Ethernet LAN traffic with free legacy data traffic and toll-free voice and fax. This is done by compression of all information on one end (data, voice, LAN), overlaying it on the existing network, and decompressing it on the other end. The mainboards of these various models of Netrunner units contains various configurations of the Z80–Zilog microprocessor, and all units contain various ROM's of program memory from .5MB to 765KB EPROM and 32KB of nonvolatile RAM. All four models possess I/O capability.

Noting Legal Note 5 (B) to Chapter 84 of the HTS, these various models of routers appear to meet the definition of a "unit" of an ADP system. They control and process information exchange within the framework of a network, and are used to interconnect the CPU to other units or ADP machines, thereby serving "control" and "adaptor" functions.

The applicable subheading for the four models of Netrunner routers will be 8471.99.1500, Harmonized Tariff Schedule of the United States (HTS), which provides for control or adaptor units. The rate of duty will be free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–466–5490.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, January 23, 1996.

CLA–2–84:RR:NC:MA:110 818275
Category: Classification
Tariff No. 8471.80.1000

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL
2400 Marine Avenue
Redondo Beach, CA 90278–1103

Re: The tariff classification of a LAN controller adapter unit from Malaysia.

DEAR MR. HECK:

In your letter dated January 18, 1996, on behalf of Tower Group International, you requested a tariff classification ruling.

The merchandise under consideration involves a LAN controller adapter unit which is known as the FrontRunner/MR–2. This device is a standalone multi rate Data Service Unit/Channel Service Unit that transmits data over digital networks at speeds ranging from 2.4 to 64 Kbps. The FrontRunner/MR–2 assists in consolidating data, voice, fax and LAN traffic over a single leased digital circuit. The dimensions of this stand alone unit are 8.5 inches wide by 3.1 inches high by 11.3 inches deep, and it weighs 4 pounds.

The FrontRunner/MR-s offers an assortment of features. These include a wide selection of data rates, including 64 Kbps Clear Channel; rate adaption for support of subrate devices over 56/54 Kbps leased lines; dial backup capability to external devices such as Basic Rate ISDN TA's, and a compact standalone unit that frees space for data, voice, fax and LAN channels in MICOM's integration products. The FrontRunner is typically connected in line between Marathon Network Servers or NetRunner Integration Routers.

Noting Legal Note 5(B) to Chapter 84, the FrontRunner /MR–2 would appear to meet the definition of a "unit" of an automatic data processing (ADP) system, and is principally used as an interconnection device in a LAN network. The applicable subheading for the FrontRunner/MR–2 LAN controller adapter unit will be 8471.80.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for other control or adapter units for use with automatic data processing machines. The rate of duty will be free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–466–5490.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, May 14, 1993.

CLA-2-84:S:N:NI:110 885967
Category: Classification
Tariff No. 8471.99.1500

KAMINO INTERNATIONAL TRANSPORT, INC.
370 McClellan Highway East
Boston, MA 02128

Re: The tariff classification of Ethernet-to-Ethernet Bridges from Ireland.

DEAR MR. RHODES:

In your letter dated May 3, 1993, on behalf of Cabletron Systems, Inc., you requested a tariff classification ruling. The merchandise under consideration involves two models of Ethernet-to-Ethernet Bridges that are used in a Local Area Network (LAN) for connecting two LAN types and control information exchange between the two segments.

Model number NB-20E is a medium-performance bridge that connects two 10 Mbps ethernet segments. This bridge features a software filtering system that determines which packets are allowed to pass through the bridge. The source address table of the NB 20E is capable of holding up to 2,048 addresses, has a filtering rate of 15,000 packets per second, and can forward packets at a rate of 8,000 packets per second.

Model number NB-25E is a high performance bridge that connects two 10 Mbps ethernet segments. This bridge features a hardware filtering system that determines which packets are allowed to pass through the bridge without imposing a load on the host CPU.

Both of these models are free-standing devices and meet the definition of a "unit" of an automatic data processing system, noting Legal Note 5 (B) to Chapter 84, HTSUS. Since these bridges control and process information exchange within the framework of a LAN system, they are principally used to effectuate the interconnection of the CPU to other units or ADP machines, thereby serving "control" and "adaption" functions.

The applicable subheading for the Ethernet-to-Ethernet Bridges will be 8471.99.1500, Harmonized Tariff Schedule of the United States (HTS), which provides for control or adapter units. The rate of duty will be free.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, February 13, 1996.

CLA–2–84:RR:NC:MA:110 A80132
Category: Classification
Tariff No. 8471.80.1000

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL
2400 Marine Avenue
Redondo Beach, CA 90278–1103

Re: The tariff classification of Statistical Multiplexers from Malaysia.

DEAR MR. HECK:

In your letter dated February 6, 1996, on behalf of Micom Communications Corp., you requested a tariff classification ruling.

The merchandise under consideration involves two models of statistical multiplexers, described as a LCi statistical multiplexer and the Val-U-Mux statistical multiplexer. The basic difference between the two multiplexers is that the LCi's are 230/250 volt units and the Val-U-Mux's are 110/115 volt units.

These statistical multiplexers are free standing units that provide remote access to almost any host computer with either 2 channel, 4 channel or 8 channel capability. Both of these models allow as many as eight asychronous devices to share a single phone line to a host computer using enhanced statistical multiplexer software as its base. The units have front panel LCD's which show the diagnostic texts available, and can mix and match different hosts, terminals and printers through flexible per-channel-end configuration.

These multiplexers are designed, and can be used in both private and public networks, such as private leased networks in one building, and in such areas as campuses and universities and manufacturing companies with distributed (private) data communications requirements. As per the inquirer, the distinction between these statistical multiplexers and more traditional multiplexers is that these statistical multiplexers are designed to provide interconnection between dumb terminals and/or desk-top processors with centrally located minicomputers in both LAN and WAN applications.

Noting Legal Note 5 (B) to Chapter 84 of the HTS, and the Explanatory Notes to the HTS (8471), these devices would appear to meet the definition of a "unit" of an ADP system, and appear to be primarily used for the interconnection of the central processing unit to other digital data processing machines.

The applicable subheading for the Statistical Multiplexers will be 8471.80.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for control or adapter units. The rate of duty will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212–466–5490.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT I]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, October 16, 1992.

CLA–2 CO:R:C:M 951570 MBR
Category: Classification
Tariff No. 8471.99.15

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICE
880 Front St., Rm 5–S–9
San Diego, CA 92188

Re: Internal Advice 71/91; Retix Remote Bridge; Local Bridge; Board Level Products; Wide Area Networking; WAN; Local Area Networking; LAN; ADP Machine; Control And Adapter Unit; HQ 951331; HQ 952659.

DEAR SIR:

This is in response to your request for Internal Advice 71/91, dated November 19, 1991, regarding the classification of the Retix Remote Bridge, the Local Bridge, and the Board Level automatic data processing machine networking products, under the Harmonized Tariff Schedule of the United States (HTSUS).

We have recently reconsidered the classification of Local Area Network (LAN) equipment. See HQ 951331, dated September 18, 1992, as modified by HQ 952659, dated October 7, 1992.

Facts:

The Retix Remote/Local Bridges ("Bridges") are stand alone units. They are fairly standard local area networking (LAN) and wide area networking (WAN) merchandise. They process data to a generic level in order to network the data and transfer it to other ADP machines. The Bridges manage data with respect to origin, priority, and user ID. At the time of importation the bridges do not contain EPROMs, cabinet, or power supply.

The "Board Level Products" ("Boards") are designed for physical incorporation into ADP machines. They operate in a similar manner to the Bridges and are analogous to network interface boards ("NIBS").

Issue:

Whether the Retix Remote/Local Bridges and network interface boards are classifiable under headings 8471 and 8473, HTSUS, which provide for automatic data processing machines and parts thereof, or under heading 8517, HTSUS, which provides for "[e]lectrical apparatus for line telephony or telegraphy"?

Law and Analysis:

Since the HTSUS came into effect there has been a great deal of controversy regarding the classification of LAN boards. However, there is no clear classification guidance from either the HTSUS or the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), primarily due to the technological advancements in this area.

However, Legal Note 5(B) to chapter 84, HTSUS, provides guidance regarding units of automatic data processing machines. It states:

> Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

We agree that the LAN and WAN Bridges and Boards are essential to the ADP systems with which they are integrated because they process and format the data of the computers they serve.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), pages 1299–1300, describe separately presented ADP units as follows:

> This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system.

Apart from central processing units and input and output units, examples of such units include:

> (4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc.

After extensive research and analysis, it is now our opinion that the principal function of the LAN and WAN Bridges and Boards is, in fact, to effectuate the interconnection of the CPU unit to other units or ADP machines, thereby serving "control" and "adaption" functions, as described by the ENs. Therefore, the instant Bridges and Boards are properly classifiable in subheading 8471.99.15, HTSUS, which provides for "Control or adapter units."

Furthermore, in their condition at importation, without EPROMs, cabinet, and power supply, pursuant to GRI 2(a), the Retix Bridges and Boards are determined to have the essential character of the finished articles.

Holding:

The Retix Remote/Local LAN and WAN Brides and Boards, are classifiable in subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT J]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, October 13, 1992.

CLA–2 CO:R:C:M 952627 MBR
Category: Classification
Tariff No. 8471.99.15

ANNETTE SMITH
INTERTRANS CORPORATION
322 East Grand Avenue
South San Francisco, CA 94080

Re: Revocation of HQ 089597; Themis Computer; TSVME 551 68020 Dual-Port Ethernet Controller; TSVME 541 X.25 Communication Board; Local Area Network; Wide Area Network; Recorded Media; HQ 951331; HQ 952659.

DEAR MS. SMITH:

On September 5, 1991, we issued HQ 089597 to you regarding the classification of Local Area Network apparatus imported by Themis Computer, under the Harmonized Tariff Schedule of the United States (HTSUS).

Subsequently, due to our ongoing research and analysis, we have reconsidered the classification of automatic data processing machine (ADP) networking equipment. See HQ 951331, dated September 18, 1992, as modified by HQ 952659, dated October 7, 1992.

Facts:

The submitted literature states that the "TSVME 551 68020 Dual-Port Ethernet Controller" is an intelligent, single board interface between a VMEbus host system and two ETHERNET Networks. ETHERNET connections are operated at their maximum rate by

the tri-bus architecture, the 5 port 1 megabyte shared memory, and a VME Fast Transfer Module. A "powerful" 16 MHz 68020 processor can support high level protocols and management of data migration control without being disturbed by the two ETHERNET controllers.

The TSVME 541 (X.25 Communication Board) Intelligent Serial Communications (ISCC) board is a VMEbus-compatible (Versa Module Europe) double Eurocard (revision C) with intelligent serial line controller capability. The onboard controller circuit provides management of two independent multiprotocol serial lines.

Issue:

Whether the TSVME 541 X.25 Communication Board and the TSVME 551 68020 Dual-Port Ethernet Controller are classifiable under heading 8471, HTSUS, which provides for "[a]utomatic data processing machines," or under heading 8517, HTSUSA, which provides for "[e]lectrical apparatus for line telephony or telegraphy"?

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUSA govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part:

> * * * classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *

Legal Note 5(B) to chapter 84, HTSUS, provides guidance regarding units of automatic data processing machines. It states:

> Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

It has been asserted that networking systems such as the "TSVME 551 68020 Dual-Port Ethernet Controller" ("Ethernet Controller") and the "X.25 Communication Board" are essential to the ADP systems they are connected to because they process and format the data of the computers they serve. We now agree. See HQ 951331, dated September 18, 1992, as modified by HQ 952659, dated October 7, 1992.

It is also important to note that the ENs, page 1299–1300, describe separately presented ADP units as follows:

> This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system.
>
> Apart from central processing units and input and output units, examples of such units include:
>
> (4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc.

This category includes channel to channel adapters used to connect two digital systems to each other.

> (5) Signal Converting units. At input, these enable an external signal to be understood by the machine, while at output, they convert the output signals that result from the processing carried out by the machine into signals which can be used externally.

The "Ethernet Controller" and the "X.25 Communication Board" LAN and WAN (Wide Area Network) systems do in fact effectuate interconnection of the CPU unit to other units or ADP machines, thereby serving control and adaption functions, as well as performing signal conversion. Thus, classification is appropriate in subheading 8471.99.15, HTSUS, which provides for ADP control or adapter units.

Our diligent research and analysis of this issue has been continually ongoing. Therefore, we have learned more about this merchandise, its functions, and its geometrically progressive technological developments.

Therefore, based on the new information acquired, and in an effort to expeditiously and accurately address this classification issue, we have reconsidered our position. It is now

our conclusion that the data processing features of control and adaption do in fact represent the principal function of the this merchandise, directing classification in subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units."

Holding:

The "TSVME 551 68020 Dual-Port Ethernet Controller" ("Ethernet Controller") and the "X.25 Communication Board" LAN and WAN merchandise is properly classifiable under subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free. The recorded media (Software) for this system remains classifiable under subheading 8524.90.40, HTSUSA, which provides for: "[r]ecords, tapes and other recorded media for sound or other similarly recorded phenomena * * *: [o]ther: [o]ther."

Effect on Other Rulings:

For the reasons stated above, HQ 089597, dated September 5, 1991, is revoked under authority of section 177.9(d), Customs Regulations.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT K]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, October 13, 1992.

CLA–2 CO:R:C:M 952628 MBR
Category: Classification
Tariff No. 8471.99.15

MR. WILLIAM J. LECLAIR
TRANSBORDER CUSTOMS SERVICES, INC.
One Trans-Border Drive
P.O. Box 800
Champlain, NY 12919

Re: Revocation of HQ 089277; The EDA Instruments, Inc., MCN.1008 Asynchronous Packet Assembler/Disassembler (PAD); Logic and Support Circuitry Necessary for Asynchronous Communication Over Private or Public Data Networks; HQ 951331; HQ 952659.

DEAR MR. LECLAIR:

On August 14, 1991, we issued HQ 089277 to you regarding the classification of the MCN.1008 Asynchronous Packet Assembler/Disassembler (PAD), under the Harmonized Tariff Schedule of the United States (HTSUS).

Subsequently, due to our ongoing research and analysis, we have reconsidered the classification of automatic data processing machine (ADP) networking equipment. See HQ 951331, dated September 18, 1991, as modified by HQ 952659, dated October 7, 1992.

Facts:

You stated that the "Packet Assembler/Disassembler" (PAD) is a data communications multiplexor designed to operate on X.25 networks provided by both public and private communications carriers, in other words, telephone companies. PADs are utilized in the following typical data network communication system configuration: COMPUTER + PAD + MODEM = NETWORK = MODEM + PAD + COMPUTER.

The literature that you have submitted states that EDA Instruments, Inc., MCN.1008 Asynchronous Packet Assembler/Disassembler (PAD) contains the logic and support circuitry necessary for asynchronous communication over private or public data networks. The MCN.1008 PAD is an X.3 Packet Assembler/Disassembler (PAD) which allows from

one to eight device interfaces to share a common X.25 communication trunk. The PAD can adapt to different types of devices through the assignment of a set of parameter values for each interface. There are also parameters to control the format of data transfer between a terminal and a computer, to improve communication efficiency by reducing the number of packets generated over the network. These parameters can be software configured according to the user's needs and are stored in a battery backed up memory called NV (non-volatile) RAM.

Issue:

Whether the "Packet Assembler/Disassembler" (PAD) is classifiable under heading 8471, HTSUS, which provides for "[a]utomatic data processing machines and units thereof," or under heading 8517, HTSUS, which provides for "[e]lectrical apparatus for line telephony or telegraphy"?

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUSA govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part:

> * * * classification shall be determined according to the terms of the headings and any relative section or chapter notes * * *

Legal Note 5(B) to chapter 84, HTSUS, provides guidance regarding units of automatic data processing machines. It states:

> Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

It has been asserted that ADP networking systems such as the MCN.1008 Asynchronous Packet Assembler/Disassembler (PAD) units are essential to the ADP systems they are connected to because they process and format the data of the computers they serve. We now agree.

It is also important to note that the ENs, page 1299–1300, describe separately presented ADP units as follows:

> This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system. Apart from central processing units and input and output units, examples of such units include:
>
> (4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc.

This category includes channel to channel adapters used to connect two digital systems to each other.

> (5) Signal Converting units. At input, these enable an external signal to be understood by the machine, while at output, they convert the output signals that result from the processing carried out by the machine into signals which can be used externally.

The PAD unit does in fact effectuate interconnection of the CPU unit to other units or ADP machines, thereby serving control and adaption functions, as well as performing signal conversion. Thus, classification is appropriate in subheading 8471.99.15, HTSUS, which provides for ADP control or adapter units. Our diligent fact finding, and research and analysis of this issue, has been continually ongoing. Therefore, we have learned more about this merchandise, its functions, and its geometrically progressive technological developments.

Therefore, based on the new information submitted, and in an effort to expeditiously and accurately address this classification issue, we have reconsidered our position. It is now our conclusion that the data processing features of control and adaption do in fact represent the principal function of the PAD unit, directing classification in subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units."

Holding:

The EDA Instruments, Inc., MCN.1008 Asynchronous Packet Assembler/Disassembler (PAD) unit is properly classifiable under subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free.

Effect on Other Rulings:

For the reasons stated above, HQ 089277, dated August 14, 1991, is revoked under authority of section 177.9(d), Customs Regulations.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT L]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 16, 1993.

CLA–2 CO:R:C:M 954059 MBR
Category: Classification
Tariff No. 8471.99.15

MR. RICHARD KIBLER
TELEMATICS INTERNATIONAL INC.
1201 Cypress Creek Road
Ft. Lauderdale, FL 33309

Re: Communications Processors ACP 10, 20, 40, 50; Network Access Controller; X.25 Packet Switch; LAN; Automatic Data Processing Machine; Control or Adapter Units; Telegraphic Switch; Packet Switch; HQ 086035 (revoked by HQ 951331); HQ 952628.

DEAR MR. KIBLER:

This is in response to your letter of March 26, 1993, to the Area Director of Customs, New York Seaport, requesting classification of automatic data processing ("ADP") communications processors (models ACP 10, 20, 40, and 50), under the Harmonized Tariff Schedule of the United States ("HTSUS"). Your letter was forwarded to this office for reply.

Facts:

The Telematics line of Access Communication Products ("ACP") are communications processors consisting of a base unit which includes a chassis, power supply, central processor unit (CPU), internal storage devices, and may contain a 3.5 inch disk drive. These products enable users to establish and manage private data networks in corporate environments for the simultaneous transmission of synchronous and asynchronous data utilizing the X.25 public packet switched networks such as U.S. Sprint, Telenet, AT&T, and British Telecom Tymnet, in the United States. These products provide interconnection and call routing between X.25 compliant equipment, such as Packet Assemblers/Disassemblers, X.25 host computers, gateways and other switches within a data network. Standard functions include packet data switching, data concentration, data routing, data error recovery and network data flow control. The common or commercial designation for these products is "Network Access Controller" or "X.25 Packet Switch."

Issue:

Are the Telematics "Access Communication Products" classifiable under subheading 8517.30.50, HTSUS, which provides for telegraphic switching apparatus, or are they classifiable under subheading 8471.99.15, HTSUS, which provides for ADP "control or adapter units"?

Law and Analysis:

Since the HTSUS came into effect there has been a great deal of controversy regarding the classification of LAN boards. However, there is no clear classification guidance from

either the HTSUS or the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), primarily due to the technological advancements in this area.

In HQ 951331, dated September 18, 1992, we cited Legal Note 5(B) to chapter 84, HTSUS, which provides guidance regarding units of automatic data processing machines. It states:

> Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

We agree that the Communication Processors are essential to the ADP systems with which they are integrated because they process and format the data of the computers they serve. In HQ 951331 we also cited the ENs, pages 1299–1300, which describe separately presented ADP units as follows:

> This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system.

Apart from central processing units and input and output units, examples of such units include:

> (4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc.

However, it is our opinion that rather than "processing" being the principal function of Local Area Network ("LAN") and Wide Area Network ("WAN") equipment, their principal function is, in fact, to effectuate interconnection of the CPU unit to other units or ADP machines, thereby serving "control" and "adaption" functions. In HQ 951331 it was our opinion that the LAN equipment did not have the essential character of control or adapter units because of its processing capabilities. However, it has come to our attention that the LAN equipment's processing capabilities are designed principally to perform the control and adaption functions, as described by the ENs.

The issue has been raised whether HQ 086035, dated August 2, 1990, is controlling since it classified a Digital Packet Network under heading 8517, HTSUS. However, HQ 086035 was revoked by HQ951331, dated September 18, 1992. The current legal precedent for this merchandise is HQ 952628, dated October 13, 1992, which held that a Packet Assembler/Disassembler was classifiable in subheading 8471.99.15, HTSUS, which provides for control or adapter units. In HQ 952628 we stated:

It is now our conclusion that the data processing features of control and adaption do in fact represent the principal function of the PAD unit, directing classification in subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units."

Holding:

The Telematics ADP Access Communication Products ACP 10, 20, 40, 50 are properly classifiable under subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT M]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, July 22, 1993.

CLA–2 CO:R:C:M 954093 MBR
Category: Classification
Tariff No. 8471.99.15

MR. RICHARD KIBLER
TELEMATICS INTERNATIONAL INC.
1201 Cypress Creek Road
Ft. Lauderdale, FL 33309

Re: Programmable Communication Processors PCP S240, S400, S4500, 5500; Packet Switching Backbone Node; X.25 Concentrator Node; Multiprotocol Network Access Node; LAN; WAN; Automatic Data Processing Machine; ADP; Control or Adapter Units; Telegraphic Switch; HQ 086035 (revoked by HQ 951331); HQ 952628.

DEAR MR. KIBLER:

This is in response to your letter of March 29, 1993, to the Area Director of Customs, New York Seaport, requesting classification of automatic data processing ("ADP") Programmable Communication Processors (models PCP S240, S400, S4500, 5500), under the Harmonized Tariff Schedule of the United States ("HTSUS"). Your letter was forwarded to this office for reply.

Facts:

The Telematics Programmable Communication Processors are programmable processors utilizing Telematics, the proprietary TRAX operating system, and can be configured to function as a packet switching backbone node, an X.25 concentrator node, a multiprotocol network access node, a gateway to LAN, WAN, private and public data networks, and as a network management center. They are commonly and commercially designated as "X.25 Packet Switches."

The PCP S240 consists of a 115/230 VAC chassis, 175 watt power supply, a 68020 processor, space for up to two 4MB memory cards, and either a 40MB or 100MB fixed disk. A number of options may be added to the S240 including Line Processing Expanders, and Ethernet Line Adapters, to provide specific telecommunication type functions.

The PCP S400 consists of a 115/230 VAC chassis, a 68020 processor, space for up to two 4MB memory cards, a CPE transition card, an Input/Output Processor, and can be configured to host up to two storage devices including a 640K microfloppy, a 40MB fixed disk and a 100MB fixed disk. A number of options may be added to the S400 including full duplex dual, quad, and octal channel input/output cards to provide specific telecommunications type functions.

The PCP S4500 consists of a 115/230 VAC chassis, up to three 68020 processors, and has space for up to four 4MB memory cards, an Address Protection Module, a Network Communications Processor, and can be configured to accommodate a 640KB microfloppy and up to four 40MB or 100MB fixed disks. A number of options can be added to the S4500 such as Line Processing Modules, Line Processing Extenders, Ethernet Line Adapters, and Transmission Communications Processors, to provide telecommunications type functions.

The PCP 5500 consists of a 115/230 VAC chassis, up to five 68020 processors, and has space for up to four 4MB memory cards, an Address Protection Module, a Network Communications Processor, up to two Transmission Communications Processor cards, and can be configured to accommodate a 640KB microfloppy and up to four 40MB or 100MB fixed disks. A number of options can be added to the S5500 such as Ethernet Line Adapters, and Transmission Communications Processors, to provide specific telecommunications type functions.

Issue:

Are the Telematics "Programmable Communication Processors" classifiable under subheading 8517.30.50, HTSUS, which provides for telegraphic switching apparatus, or are they classifiable under subheading 8471.99.15, HTSUS, which provides for ADP "control or adapter units"?

Law and Analysis:

Since the HTSUS came into effect there has been a great deal of controversy regarding the classification of LAN boards. However, there is no clear classification guidance from either the HTSUS or the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), primarily due to the technological advancements in this area.

In HQ 951331, dated September 18, 1992, we cited Legal Note 5(B) to chapter 84, HTSUS, which provides guidance regarding units of automatic data processing machines. It states:

> Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

We agree that the PCPs are essential to the ADP systems with which they are integrated because they process and format the data of the computers they serve.

In HQ 951331 we also cited the ENs, pages 1299–1300, which describe separately presented ADP units as follows:

> This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system.

Apart from central processing units and input and output units, examples of such units include:

> (4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc.

However, it is our opinion that rather than "processing" being the principal function of such Local Area Network ("LAN") and Wide Area Network ("WAN") equipment, their principal function is, in fact, to effectuate interconnection of the CPU unit to other units or ADP machines, thereby serving "control" and "adaption" functions. In HQ 951331 it was our opinion that the LAN equipment did not have the essential character of control or adapter units because of its processing capabilities. However, it has come to our attention that the LAN equipment's processing capabilities are designed principally to perform the control and adaption functions, as described by the ENs.

The issue has been raised whether HQ 086035, dated August 2, 1990, is controlling since it classified a Digital Packet Network under heading 8517, HTSUS. However, HQ 086035 was revoked by HQ 951331, dated September 18, 1992. The current legal precedent for this merchandise is HQ 952628, dated October 13, 1992, which held that a Packet Assembler/Disassembler was classifiable in subheading 8471.99.15, HTSUS, which provides for control or adapter units. In HQ 952628 we stated: It is now our conclusion that the data processing features of control and adaption do in fact represent the principal function of the PAD unit, directing classification in subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units."

Holding:

The Telematics ADP Programmable Communication Processors models PCP S240, S400, S4500, 5500, are properly classifiable under subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT N]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, August 9, 1993.

CLA–2 CO:R:C:M 954249 MBR
Category: Classification
Tariff No. 8471.99.15

MR. MARK JONES
IMPORT/EXPORT SPECIALIST
HITACHI AMERICA, LTD.
50 Prospect Avenue
Tarrytown, NY 10591–4698

Re: Hitachi Telecom (USA), Inc.; Asynchronous Transfer ModeSwitch/Multiplexor; Model AMS5000; ATM; LAN; WAN; Automatic Data Processing Machine; ADP; Control or Adapter Units; Telegraphic Switch; HQ 952628; HQ 954093; HQ 954059; HQ 952659.

DEAR MR. JONES:

This is in response to your letter of May 6, 1993, to the Regional Commissioner of Customs, New York, requesting classification of the Hitachi Telecom (USA), Inc., Asynchronous Transfer Mode Switch/Multiplexor model AMS5000, under the Harmonized Tariff Schedule of the United States ("HTSUS"). Your letter was forwarded to this office for reply.

Facts:

The Hitachi Asynchronous Transfer Mode Switch/Multiplexor ("ATM") model AMS5000 is designed for and marketed to network service providers for the interconnection and communication of local area networks ("LANs"). The ATM functions as a switching device, routing data packets of information. The ATM closely resembles a packet switching device. In addition to general LAN automatic data processing ("ADP") information, the ATM is capable of transmitting digital video, and multimedia, such as medical imaging and high definition television ("HDTV").

Issue:

Is the Hitachi ATM classifiable under subheading 8517.30.50, HTSUS, which provides for telegraphic switching apparatus, or under subheading 8471.99.15, HTSUS, which provides for ADP "control or adapter units"?

Law and Analysis:

The importer states that the ATM is designed for and marketed to network service providers for the interconnection of LANs.

Legal note 5(B) to chapter 84, HTSUS, provides guidance regarding the scope of the provisions for "units" of automatic data processing machines. It states as follows:

> Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

The ATMs are connectable numerous CPUs through the LAN systems. Furthermore, the instant ATMs are designed for, and essential to, the ADP systems with which they are integrated because they process and format the data of the computers they serve.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), pages 1299–1300, describe separately presented ADP units as follows:

> This heading also covers separately presented constituentunits of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of acomplete system.

Apart from central processing units and input and outputunits, examples of such units include:

* * * * * * *

(4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc.

Since the issuance of HQ 952659, dated October 7, 1992, Customs has consistently held that LAN units are classifiable as ADP control or adapter units in subheading 8471.99.15, HTSUS, because they meet the chapter 84, legal note 5(B) definition. Furthermore, they meet the ENs, pages 1299–1300, which describe separately presented ADP units. The instant ATM performs LAN functions by, in fact, creating larger LAN networks.

Therefore, although the ATM is capable of transmitting other digital signals, such as video images and medical imaging, it is principally used for ADP LAN interconnection.

The current legal precedent for this merchandise is HQ 952628, dated October 13, 1992, which held that a Packet Assembler/Disassembler was classifiable in subheading 8471.99.15, HTSUS, which provides for ADP control or adapter units. In HQ 952628 we stated:

> It is now our conclusion that the data processing features of control and adaption do in fact represent the principal function of the PAD unit, directing classification in subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units."

Additionally, the ATM is similar to the merchandise ruled upon in HQ 954093, dated July 22, 1993, and HQ 954059, dated July 16, 1993, which held that LAN packet switching merchandise was properly classifiable under subheading 8471.99.15, HTSUS.

Holding:

The Hitachi model AMS5000 Asynchronous Transfer Mode Switch/Multiplexor, which is designed for the interconnection of LANs, is properly classifiable under subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT O]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, July 6, 1994.

CLA–2 CO:R:C:M 955907 MBR
Category: Classification
Tariff No. 8471.99.15

MS. SUSAN KOHN ROSS
ROSS & ASSOCIATES
5777 West Century Blvd. Suite 520
Los Angeles, CA 90045–5659

Re: Reconsideration of NY 869010; "TROLI" Module; ADP Unit; Control or Adapter Unit; HQ 951331; HQ 952659.

DEAR MS. ROSS:

This is in response to your letter of February 14, 1994, on behalf of Pulse Engineering, Inc., requesting reconsideration of NY 869010, dated December 18, 1991, issued by the Area Director of Customs, New York Seaport, to a Customs broker on behalf of Pulse Engineering, Inc., regarding the classification of the "TROLI" Module for Local Area Networking ("LAN"), under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The "TROLI" Module (Token Ring Optimized Interface) is a module that is mounted on a Network Interface Board "NIB" to provide an analog connection between a Texas Instruments COMMprocessor and the connector used to transmit and receive encoded signals over either 150 Ohm standard twisted pair ("STP") cable or 100 Ohm UTP cable. The TROLI module performs the major portion of the local area networking ("LAN") interface board and facilitates the encoding and decoding of information moving to and from the personal computer ("PC"). Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. No. 103–182, 107 Stat. 2057, 2186 (1933)(hereinafter "section 625"), notice of the proposed revocation of NY 869010 was published June 1, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 22. No comments were received. Our decision in this matter is set forth below. ISSUE:

What is the classification of the "TROLI" Module, under the HTSUS?

Law and Analysis:

NY 869010, dated December 18, 1991, held that the instant TROLI modules were classified in subheading 8517.82.00, HTSUS, which provides for telegraphic apparatus.

Since the HTSUS came into effect there has been a great deal of controversy regarding the classification of LAN boards. However, there is no clear classification guidance from either the HTSUS or the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), primarily due to the technological advancements in this area.

However, in HQ 951331, dated September 18, 1992, (as modified by HQ 952659, dated October 7, 1992), we cited Legal Note 5(B) to chapter 84, HTSUS, which provides guidance regarding units of automatic data processing machines. It states:

> Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

We agree that the TROLI Modules are essential to the ADP systems with which they are integrated because they process and format the data of the computers they serve.

In HQ 951331 we also cited the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), pages 1299–1300, which describe separately presented ADP units as follows:

> This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system.
>
> Apart from central processing units and input and outputunits, examples of such units include:
>
> (4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc.

It is our opinion that rather than "processing" being the principal function of such Local Area Network ("LAN") and Wide Area Network ("WAN") equipment, their principal function is, in fact, to effectuate interconnection of the CPU unit to other units or ADP machines, thereby serving "control" and "adaption" functions. In HQ 951331 it was our opinion that the LAN equipment did not have the essential character of control or adapter units because of its processing capabilities. However, it has come to our attention that the LAN equipment's processing capabilities are designed principally to perform the control and adaption functions, as described by the ENs.

Holding:

The instant TROLI Modules are classifiable under subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free. NY 869010, dated December 18, 1991, is revoked.

In accordance with section 625, this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT P]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, September 26, 1994.

CLA-2 CO:R:C:M 956406 DWS
Category: Classification
Tariff No. 8471.99.15

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICE
11 W. Huron Street, Room 603
Buffalo, NY 14202-2378

Re: Protest 0901-94-100090; Data Switching Device; Section XVI, Note 3; Composite Machine; HQs 951331, 086035, 954059, and 952993; NY 843415; 8517.30.50.

DEAR DISTRICT DIRECTOR:

The following is our decision regarding Protest 0901-94-100090 concerning your action in classifying and assessing duty on a data switching device under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The merchandise consists of a data switching device (model no. DPN-100), imported from Canada. It is designed to handle large scale, wide area data networks supporting from less than 100 lines to over 1,000,000 lines. This enables users to send data between multiple points, usually host computers and terminals. Typical user applications include electronic funds transfers, electronic mail, file transfers between computers, and point of sale or credit card authorization terminal transaction processing with a host computer. These applications usually involve industries such as banking, utilities, government, public telephone companies, large corporations, and retail industries.

The data switching device requires an external modem to transmit and receive data over carrier current line systems. However, it is dedicated to the transmission between two points of electrical impulses representing text and/or images and other data using a line connection connecting the transmitting station to the receiving station. The device is not intended for the transmission of speech or other sounds.

The data switching device was entered under subheading 8471.99.15, HTSUS, as an automatic data processing (ADP) control or adapter unit. The entry was liquidated on November 19, 1993, under subheading 8517.30.50, HTSUS, as other telephonic or telegraphic switching apparatus. The protest was timely filed on February 1, 1994.

The subheadings under consideration are as follows:

8517.30.50: [e]lectrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems; parts thereof: [t]elephonic or telegraphic switching apparatus: [o]ther.

The general, column one rate of duty for goods classifiable under this provision is 4.7 percent ad valorem.

8471.99.15: [a]utomatic data processing machines and units thereof; * * * : [o]ther: [o]ther: [c]ontrol or adapter units.

Goods classifiable under this provision receive duty-free treatment.

Issue:

Whether the data switching device is classifiable under subheading 8517.30.50, HTSUS, as other telephonic or telegraphic switching apparatus, or under subheading 8471.99.15, HTSUS, as an ADP control or adapter unit.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

Section XVI, note 3, HTSUS, states that:

> [u]nless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

Because the subject merchandise consists of a machine adapted for the purpose of performing both communication (heading 8517, HTSUS) and data processing (heading 8471, HTSUS) functions, it is a composite machine. Therefore, we must determine its principal function.

In HQ 951331, dated September 18, 1992, in classifying local area network (LAN) interface boards, we revoked, among other rulings, NY 843415, dated August 8, 1989, and HQ 086035, dated August 2, 1990, both of which held that a digital packet network (DPN), very similar to the subject merchandise and from the same importer, was classifiable under subheading 8517.30.50, HTSUS. In 951331, we stated that the principal function of this class of merchandise is imparted by the data processing functions.

Therefore, based upon the reasoning in HQ 951331, it is our position that the data switching device is classifiable under subheading 8471.99.15, HTSUS. See also 954059, dated July 16, 1993.

You have cited HQ 952993, dated February 8, 1993, as precedent for classification of the subject merchandise under subheading 8517.30.50, HTSUS. In that ruling, we held that a switching node solely for use with an automatic teller machine (ATM) was classifiable under heading 8517, HTSUS. It is our position that the merchandise in that ruling is not in the same class of merchandise as that of the subject data switching device, and therefore is not relevant to this case.

Holding:

The data switching device (model no. DPN–100) is classifiable under subheading 8471.99.15, HTSUS, as an ADP control or adapter unit.

The protest should be GRANTED in full. In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, this decision, together with the Customs Form 19, should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act, and other public access channels.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT Q]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, October 13, 1992.

CLA-2 CO:R:C:M 952631 MBR
Category: Classification
Tariff No. 8471.99.15

MR. HARRY WOOD
H.A. & J.L. WOOD, INC.
Pembina, ND 58271

Re: Revocation of HQ 086478; "DevelNet" Local Area Network (LAN) System; Develcon Electronics; HQ 951331; HQ 952659.

DEAR MR. WOOD:

On April 9, 1990, we issued HQ 086478 to you regarding the classification of the "DevelNet" LAN system, under the Harmonized Tariff Schedule of the United States (HTSUS).

Subsequently, due to our ongoing research and analysis, we have reconsidered the classification of automatic data processing machine (ADP) networking equipment. See HQ 951331, dated September 18, 1992, as modified by HQ 952659, dated October 7, 1992.

Facts:

The DevelNet system has been designed to fulfill local area network requirements by providing data processing functions similar to a centralized data PBX. The system also allows the user to create regional or national "wide area" networks by connecting various local area networks into a fully integrated data communications network. This will permit users of the various terminals, computers, or other devices, in one part of the network to communicate with other equipment (users, data bases, terminals, etc.) throughout the network which may operate with different communications protocols and speeds. In addition, DevelNet is being developed to provide access to public and private data transmission networks such as Telenet, Tymnet, Datapac and Ethernet. DevelNet is also being designed to incorporate data PBX or local area networking devices from other vendors into its wide area network. This will permit customers who have already installed local data communications equipment (i.e., Local Area Networks) to implement a wide area network without having to replace previously installed equipment. DevelNet has been designed to incorporate network management features, redundant power supplies, controller boards, and self diagnostic capabilities.

Issue:

What is the classification of the "DevelNet" LAN system, under the Harmonized Tariff Schedule of the United States?

Law and Analysis:

The General Rules of Interpretation (GRI's) to the HTSUSA govern the classification of goods in the tariff schedule. GRI 1 states, in pertinent part:

> * * * classification shall be determined according to the terms of the headings and any relative section or chapter notes * * * Legal Note 5(B) to chapter 84, HTSUS, provides guidance regarding units of automatic data processing machines. It states:
>
> > Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
> >
> > (a) It is connectable to the central processing unit either directly or through one or more other units; and
> >
> > (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

It has been asserted that networking systems such as the "DevelNet" system are essential to the ADP systems they are connected to because they process and format the data of the computers they serve. We now agree.

It is also important to note that the ENs, page 1299–1300, describe separately presented ADP units as follows:

> This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system.

Apart from central processing units and input and output units, examples of such units include:

> (4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc. This category includes channel to channel adapters used to connect two digital systems to each other.
>
> (5) Signal Converting units. At input, these enable an external signal to be understood by the machine, while at output, they convert the output signals that result from the processing carried out by the machine into signals which can be used externally.

The "DevelNet" LAN system does in fact effectuate interconnection of the CPU unit to other units or ADP machines, thereby serving control and adaption functions, as well as performing signal conversion. Thus, classification is appropriate in subheading 8471.99.15, HTSUS, which provides for ADP control or adapter units.

Our diligent research and analysis of this issue has been continually ongoing. Therefore, we have learned more about this merchandise, its functions, and its geometrically progressive technological developments.

Therefore, based on the new information acquired, and in an effort to expeditiously and accurately address this classification issue, we have reconsidered our position. It is now our conclusion that the data processing features of control and adaption do in fact represent the principal function of the "DevelNet" system, directing classification in subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units."

Holding:

The Develcon Electronics "DevelNet" LAN system is properly classifiable under subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free.

Effect on Other Rulings:

For the reasons stated above, HQ 086478, dated April 9, 1990, is revoked under authority of section 177.9(d), Customs Regulations.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT R]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, June 30, 1998.

CLA-2 RR:CR:GC 961364 DWS
Category: Classification
Tariff No. 8471.80.10

PORT DIRECTOR OF CUSTOMS
10 Causeway Street, Suite 603
Boston, MA 02222-1059

Re: Protest 0401-97-100506; Shiva AccessPort.

DEAR PORT DIRECTOR:

The following is our decision regarding Protest 0401-97-100506 concerning your action in classifying and assessing duty on the Shiva AccessPort under the Harmonized Tariff Schedule of the United States (HTSUS).

Facts:

The merchandise consists of the Shiva AccessPort, which is a stand-alone router geared to telecommuters and small branch office users requiring remote access to Internet service providers and large corporate local area networks (LANs). Through the use of this equipment over a telephone line, branch office employees may perform such functions as send and receive electronic mail, download critical documents, and reference product and order information. The AccessPort's hardware specifications consist of the following: one 10BaseT Ethernet Interface, one RS232 Admin Port, two analog telephone sockets, one integrated services digital network (ISDN) basic rate interface (BRI), front panel light emitting diodes (LEDs) for status review, external power supply, and Ethernet and ISDN cables. It allows for aggregation of two ISDN B-channels using multi-link point-to-point protocol (PPP) for 128 kbps throughput, and supports voice, facsimile, and data communication.

To keep connection time at a minimum, the router utilizes routing technology referred to as "spoofing", which distinguishes when one LAN system is communicating with another over the telephone line and disconnects the telephone line when no such communication occurs.

The AccessPort can provide up to 16 Internet protocol (IP) addresses, subnet mask, gateway address, domain name, and primary and secondary addresses, simplifying set up of small offices. The AccessPort coordinates with ADP machines utilizing Windows installed Wizard and Shiva Monitor graphics software. The AccessPort also contains the mass deployment tool (MDT), which allows network managers to control the configuration of a large number of AccessPorts centrally. A Windows graphics interface allows AccessPort configurations to be saved in ASCII format and provides tools allowing transfer of configurations and firmware upgrades to and from AccessPorts.

The merchandise was entered on October 13, 1996, under subheading 8471.80.10, HTSUS, as ADP control or adapter units. The entry was liquidated on October 17, 1997, under subheading 8517.50.50, HTSUS, as other telephonic apparatus for carrier-current line systems or for digital line systems. The protest was timely filed on November 10, 1997.

Issue:

Whether the AccessPort is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.50, HTSUS, as other telephonic apparatus for carrier-current line systems or for digital line systems.

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The 1996 HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units.

* * * * * * *

8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; videophones; parts thereof:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
8517.50.50	Telephonic.

* * * * * * *

In HQ 952631, dated October 13, 1992, we dealt with the classification of the DevelNet system, which was designed to allow a user to create regional or national wide area networks (WANs) by connecting various LANs into a fully integrated data communications network. In that ruling, we held the DevelNet system to be classifiable under subheading 8471.99.15, HTSUS (the predecessor to subheading 8471.80.10, HTSUS). See also HQ 952628, dated October 13, 1992, and HQ 952812, dated December 30, 1992. Therefore, based upon the information provided, as the AccessPort is similar to the DevelNet system, we find that it is classifiable under subheading 8471.80.10, HTSUS.

Holding:

The Shiva AccessPort is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit.

The protest should be GRANTED. In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, this decision, together with the Customs Form 19, should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of this decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act, and other public access channels.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT S]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 30, 1992.

CLA–2 CO:R:C:M 952812 MBR
Category: Classification
Tariff No. 8517.10.00 and 8471.99.15

MR. TERRY GARTMAN
LODESTAR TECHNOLOGY INC.
3101 Maguire Blvd., Suite 251
Orlando, FL 32803

Re: ISDN Teleset; Voice and Data Transmission; ISDN Personal Computer Adapter; Network Interface Board; Automatic Data Processing Machine; Telephone Set; 8471; 8517.

DEAR MR. GARTMAN:

This is in reply to your letter of September 8, 1992, on behalf of Lodestar Technology Inc., regarding the classification of the "ISDN Teleset" and the "ISDN Personal Computer Adapter," under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter was forwarded to this office for reply.

Facts:

The two articles at issue are the "ISDN Teleset" and the "ISDN PC Adapter."

The "ISDN Teleset" is essentially a telephone set integrated with a data interface. Therefore, it is possible to simultaneously use this telephone for voice transmission as well as data transmission. The telephone set provides all of the standard advanced telephone features such as "hold," "conference," "drop," "last number redial," etc. The Teleset also has a 40 X 4 character LCD display for messaging such as caller ID, calendar, clock, etc.

The "ISDN PC Adapter" is designed to be incorporated into a personal computer. It performs packet switching of data using X.25 protocol and circuit switching of data using either X.25 or V.120 protocols. It is also possible to attach an analogue telephone to the B-Channel using the RJ–11 connector jack on the adapter's back bracket.

Issue:

Are the "ISDN Teleset" and the "ISDN PC Adapter" classifiable under heading 8517, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems," or are they classifiable under heading 8471, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof"?

Law and Analysis:

Since the HTSUS came into effect there has been a great deal of controversy regarding the classification of ADP data transmission and reception apparatus. However, there is no clear classification guidance from either the HTSUS or the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), primarily due to the technological advancements in this area. The instant ISDN PC Adapter is a plug-in card that is inserted into an XT, AT or compatible PC and attaches to an ISDN basic rate interface. "ISDN" stands for Integrated Services Digital Network. The ISDN PC Adapter card integrates various data transmission and reception (such as data, facsimile, and image) and voice transmission, into a specialized digital transmission network. The Computer Glossary, Fourth Edition, Alan Freedman (1989), defines a "Local Area Network," "Baseband," and "Broadband Network" as follows:

> A local area network is a communications network that serves several users within a confined geographical area. Although the term may refer to any communications network within a building or plant, it typically refers to the interconnection of personal computers.

Personal computer local area networks function as distributed processing systems in which each computer, or node, in the network does its own processing and manages some of its data. Shared data is stored in a high-performance pc in the network, called a file server or network server, which acts as a remote disk drive to all the users in the network.

The printers that are attached to the network can function on a first-come, first-served basis, or they can be connected to a computer, called a print server, which collects the print output and feeds it to the printer one job at a time.

A local area network is the backbone of office automation and allows electronic mail and other information to be communicated between all users of the system. Local area networks are becoming essential for small work groups that enter, share and exchange the same information. With the use of a gateway, local area networks can connect to minicomputer and mainframe networks.

BASEBAND NETWORKS Baseband networks are all digital networks that require information in digital form. Examples are ARCNET, Token Ring, Ethernet and Starlan. All of these networks are driven by network management software that resides in the file servers and the work stations. Examples of network software are Microsoft's NetBIOS and LAN Manager, Apple Talk, TPC/IP and Novell's NetWare.

BROADBAND NETWORKS Broadband networks use carrier frequencies and can handle voice and video transmission as well, for example, Wang Computer's WangNET.

Customs first held that LAN boards were classifiable under heading 8471, HTSUS, because the submitted information was persuasive that the LANs' principal function was that of data processing (See HQ 086105, dated May 7, 1990).

Section XVI, Legal Note 3, provides direction for the classification of machines with more than one function. It states:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary functions are to be classified as if consisting only of that component or as being that machine which performs the principal function. (Emphasis added).

There has been no dispute that LANs have two complementary functions, i.e., transmission and data processing. Therefore, the issue has been one of which performs the principal function. Subsequent to HQ 086105, it was determined that the principal function of the LANs was that of data transmission, and were classifiable under heading 8517, HTSUS, which provides for:

"[e]lectrical apparatus for line telephony or telegraphy."

However, Legal Note 5(B) to chapter 84, HTSUS, provides guidance regarding units of automatic data processing machines. It states:

> Automatic data processing machines may be in the form of systems consisting of a variable number of separately housed units. A unit is to be regarded as being a part of the complete system if it meets all of the following conditions:
>
> (a) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (b) It is specifically designed as part of such a system (it must, in particular, unless it is a power supply unit, be able to accept or deliver data in a form (code or signals) which can be used by the system).

It was argued that the networking boards were essential to the ADP systems they serve because they process and format the data of the computers they serve. We now agree. In fact, in the future, LAN boards or their antecedents may be incorporated into PCs at the time of manufacture. Apparently, the only reason they are not presently incorporated at manufacture is because of the myriad of different types of LAN systems, which cannot necessarily communicate or interact with each other. Therefore, end users must choose the type of LAN system that best suits their needs.

It is also important to note that the ENs, page 1299–1300, describe separately presented ADP units as follows:

> This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) and (B) above as being parts of a complete system.

Apart from central processing units and input and output units, examples of such units include:

> (4) Control and adaptor units such as those to effect interconnection of the central processing unit to other digital data processing machines, or to groups of input or output units which may comprise visual display units, remote terminals, etc.

This category includes channel to channel adapters used to connect two digital systems to each other.

> (5) Signal Converting units. At input, these enable an external signal to be understood by the machine, while at output, they convert the output signals that result from the processing carried out by the machine into signals which can be used externally.

The instant ISDN PC Adapter does in fact effectuate interconnection of the CPU unit to other units or ADP machines, thereby serving control and adaption functions, as well as performing signal conversion. We find these ADP functions to be the principal function.

Our diligent fact finding, and research and analysis of this issue, has been continually ongoing. Therefore, we have learned more about this type of merchandise, its functions, and its geometrically progressive technological developments. Furthermore, we have consulted with the Customs Administrations of other countries regarding their legal analysis of this issue. We have found that a substantial majority of other Administrations are classifying this merchandise in heading 8471, of the HS. While the views of the other Administrations are not binding on the U.S. Customs Service, they were useful in the analysis of this issue.

Therefore, it is now our conclusion that the data processing features do in fact represent the principal function of the ISDN PC Adapter, directing classification in subheading 8471.99.15, HTSUS, which provides for control or adapter units.

However, the "ISDN Teleset" is quite different merchandise. It is a telephone set that also integrates two RS232 ports for asynchronous and synchronous data communications. Therefore, the ISDN Teleset is also a "machine adapted for the purpose of performing two or more complementary functions." You have provided no data regarding principal function, however, it is Customs position that this is simply an advanced telephone set that provides the user with additional features for expanded use. We can envision a time not that far in the future when all telephone sets will have a data port to facilitate the transmission and

reception of data. Therefore, the function of the telephone set is found to impart the principal function. Thus, the "ISDN Teleset" is classifiable in subheading 8517.10.00, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems: [t]elephone sets."

Holding:

The instant ISDN PC Adapter is classifiable under subheading 8471.99.15, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof: [o]ther: [o]ther: [c]ontrol or adapter units." The rate of duty is Free.

The "ISDN Teleset" is classifiable in subheading 8517.10.00, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or telegraphy, including such apparatus for carrier-current line systems: [t]elephone sets." The rate of duty is 8.5% ad valorem.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT AA]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963234 RFA
Category: Classification
Tariff No. 8517.50.90

MS. SANDRA SWANSON
ALROD INTERNATIONAL, INC.
880 Stanton Road
Burlingame, CA 94010

Re: Networking Adapters; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; NY 801302, modified.

DEAR MS. SWANSON:

This is in reference to NY 801302, dated August 30, 1994, which was issued to you on behalf of Transware International, classifying various networking apparatus identified as the "EtherWay", the "SerialWay", the "InterTalk", and the "TransTalk", as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the "TransTalk" set forth in that ruling is incorrect. This modification will not affect the classification of the other apparatus.

Facts:

The "TransTalk" is a Wide Area Network (WAN) router. It allows connection of Macintosh networks, as opposed to individual Macintosh computers, to ISDN (Integrated Services Digital Network), switched 56 or modems on analog phone lines. It is designed to establish transparent connections between remote "LocalTalk" networks, regardless of the connecting hardware and software used. Once a WAN is established, all users on both networks can access and share all services.

Issue:

Whether the "TransTalk" is classifiable under subheading 8471.80.10, HTSUS, as ADP control or adapter units, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
*	* * * * * * *
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the "TransTalk" is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In NY 801302, dated August 30, 1994, Customs classified the "TransTalk", under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the "TransTalk" is not intended for use as a bridge or router in an ADP system such as a Local Area Network (LAN). Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the "TransTalk" functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, they are classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The "TransTalk" is classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * * : [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

NY 801302, dated August 30, 1994, is modified as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT BB]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 963235 RFA
Category: Classification
Tariff No. 8517.50.60

MR. ANTHONY R. PRANSES
RUDOLPH MILES & SONS, INC.
4950 Gateway East
P.O. Box 11057
El Paso, TX 79983

Re: Networking Interfacing Device; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; NY 811909, modified.

DEAR MR. PRANSES:

This is in reference to NY 811909, dated June 27, 1995, which was issued to you on behalf of Xircom Inc., classifying various networking interfacing devices identified as the CE-10B2-MAU, the CEM-10BT-DAA, and the PPX-03 models, as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the CEM-10BT-DAA model set forth in that ruling is incorrect. This modification will not affect the classification of the other devices.

Facts:

The merchandise under consideration involves an interface device which is known as the CEM-10BT-DAA model. This device is terminated to conductive cable rather than being housed in a single unit.

The CEM-10BT-DAA device provides both physical and data-link interfaces between a data network such as an Ethernet Local Area Network (LAN) or the Public Switched Telephone Network (PSTN) and a Xircom Network Interface Card (NIC) installed inside a computer. The physical and data-link interface functions include analog to digital and digital to analog data conversion, and related activities. Although the CEM-10BT-DAA device does link a modem with a PSTN, it also provides other functions including signaling network status to the host computer through the attached Xircom NIC. Data transmission between the CEM-10BT-DAA device and the LAN occurs through the Xircom Network Interface Card.

Issue:

Whether the CEM-10BT-DAA device is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.60, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
* * * * * * *	
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.60	For carrier-current line systems. * * *

We must first ascertain in which HTSUS provisions the CEM–10BT–DAA device is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In NY 811909, dated June 27, 1995, Customs classified the CEM–10BT–DAA device under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the CEM–10BT–DAA device is not intended for use as a control or adapter unit in an ADP system such as a Local Area Network (LAN). The CEM–10BT–DAA device provides interface and conversion functions between a LAN and a PSTN. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or

electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the CEM–10BT–DAA device functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, they are classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.60, HTSUS.

Holding:

The CEM–10BT–DAA device is classifiable under subheading 8517.50.60, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [f]or carrier-current line systems. * * *"

Effect on Other Rulings:

NY 811909, dated June 27, 1995, is modified as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT CC]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE.
Washington, DC.

CLA–2 RR:CR:GC 963236 RFA
Category: Classification
Tariff No. 8517.50.90

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278–1103

Re: NetRunner Integration Router; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; NY 813194, revoked.

DEAR MR. HECK:

This is in reference to NY 813194, dated August 2, 1995, which was issued to you on behalf of Micom Communications Corporation, classifying the NetRunner 75E Integration Router as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the NetRunner Integration Router set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involves a NetRunner 75E Integration Router which is basically a free standing unit that allows for multiprotocol transmissions to be sent across wide area network (WAN) lines. This device is a high-performance IP/IPX (Internet Protocol/Internet Packet EXchange) router, with hardware data compression and central point of control. Voice digitization and compression is performed by using 20 MIPS (million instructions per second) digital signal processors in order to reduce WAN bandwidth requirements. This multiprotocol router offers the capability to integrate data and voice/fax traffic, while minimizing overall network administrative burdens.

Each NetRunner Integration Router includes from two to five data ports for integrating legacy synchronous data (e.g. SNA, X.25, DDCMP) and legacy async data (e.g. DEC, HP, Unix) along with remote LAN traffic. The board of this unit contains a Z80-Zilog micropro-

cessor, 1.5MB of flash EPROM for program memory, BIOS PROM, and has I/O capability. This device is approximately 17 inches in width, 4.4 inches in height, and 11.8 inches in depth, and weighs 13 pounds.

Issue:

Whether the NetRunner Integration Router is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
* * * * * * *	
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the NetRunner Integration Router is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In NY 813194, dated August 2, 1995, Customs classified the NetRunner Integration Router under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the NetRunner Integration Router is not intended for use as a bridge or router in an ADP system such as a Local Area Network (LAN). Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *

(III) APPARATUS FOR CARRIER-CURRENT LINE SYSTEMS OR FOR DIGITAL LINE SYSTEMS

These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).

These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the NetRunner Integration Router functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The NetRunner Integration Router is classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

NY 813194, dated August 2, 1995, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT DD]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963238 RFA
Category: Classification
Tariff No. 8517.50.90

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278–1103

Re: Network Servers; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; NY 815560, revoked.

DEAR MR. HECK:

This is in reference to NY 815560, dated November 2, 1995, which was issued to you on behalf of Micom Communications Corporation, classifying four models of "Marathon" Network Feeders or Nodes as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the Marathon Network Feeders and Nodes set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involves four models of the "Marathon" Network Feeders and Nodes. The physical dimensions of each of these units is approximately 17.5-inches wide, by 6.5-inches high by 12-inches deep and weights approximately 22 to 27 pounds.

The "Marathon" 1K Data/Voice Network Feeder provides site-to-site data, voice/fax, and local area network (LAN) communication. The "Marathon" 1K's feeder capabilities let it

evolve into multi-site "Marathon" 10K/20K networks. It provides for one digital Wide Area Network (WAN) link, up to four voice/fax channels, up to 41-asynchronous data channels, one synchronous data channel, with remote LAN Bridge support.

The "Marathon" 5K Turbo Data/Voice Network Node is utilized for small integrated multi-site networks with one to three offices. It also functions as a high performance feeder into a "Marathon" 10K/20K network. The "Marathon" 5K Turbo provides for up to two digital WAN links, up to eight voice/fax channels, up to forty-one asynchronous data channels asynchronous data channels, up to twelve synchronous data channels, with remote Terminal Server support and Remote LAN Bridge support.

The "Marathon" 10K Network Node is employed for applications with 20 to 25 remote offices. The "Marathon" 10K provides for up to four digital WAN links, up to eight voice/fax channels, up to forty-one asynchronous data channels, up to fourteen synchronous data channels, with remote Terminal Server support and remote LAN Bridge support.

The "Marathon" 20K Network Node id designed for applications involving more than 25-remote offices. The "Marathon" 20K provides for up to six digital WAN links, up to eight voice/fax channels, up to forty-one asynchronous data channels, up to eighteen synchronous data channels, with remote Terminal Server support and remote LAN Bridge support.

Issue:

Whether the "Marathon" Network Feeders and Nodes are classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
*	* * * * * * *
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the "Marathon" Network Feeders and Nodes are described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In NY 815560, dated November 2, 1995, Customs classified the "Marathon" Network Feeders and Nodes under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the "Marathon" Network Feeders and Nodes are not intended for use in an ADP system such as a Local Area Network (LAN). Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Com-

modity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) APPARATUS FOR CARRIER-CURRENT LINE SYSTEMS OR FOR DIGITAL LINE SYSTEMS
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the "Marathon" Network Feeders and Nodes function as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The "Marathon" Network Feeders and Nodes are classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

NY 815560, dated November 2, 1995, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT EE]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963239 RFA
Category: Classification
Tariff No. 8517.50.90

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278–1103

Re: NetRunner Integration Routers; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; NY 815902, revoked.

DEAR MR. HECK:

This is in reference to NY 815902, dated October 20, 1995, which was issued to you on behalf of Micom Communications Corporation, classifying four models of NetRunner Integration Routers as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the NetRunner Integration Routers set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involve four models of the NetRunner Integration Routers, which are basically free standing units that allow for multiprotocol transmissions to be sent across wide area network (WAN) lines. The four models include the following: Netrunner 50E data/voice internetwork feeder/router; Netrunner 100E Data/voice Internetwork Node; Netrunner 200E Integration Router, and Netrunner 500ET Integration Router.

These Netrunner units are high performance IP/IPX (Internet Protocol/Internet Packet EXchange) routers, with hardware data compression and central point of control. Voice digitization and compression is performed by using 20 MIPS (million instructions per second) digital signal processors in order to reduce WAN bandwidth requirements. The Netrunner series is Novell certified and integrates Ethernet local area network (LAN) traffic with free legacy data traffic and toll-free voice and fax. This is done by compression of all information on one end (data, voice, LAN), overlaying it on the existing network, and decompressing it on the other end. The mainboards of these various models of Netrunner units contains various configurations of the Z80–Zilog microprocessor, and all units contain various ROM's of program memory from 0.5MB to 765KB EPROM and 32KB of nonvolatile RAM. All four models possess I/O capability.

Issue:

Whether the NetRunner Integration Routers are classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
*	* * * * * *
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:

8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the NetRunner Integration Routers are described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In NY 815902, dated October 20, 1995, Customs classified the NetRunner Integration Routers under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the NetRunner Integration Routers are not intended for use as routers in an ADP system such as a LAN. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the NetRunner Integration Routers function as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The NetRunner Integration Routers are classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * * : [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

NY 815902, dated October 20, 1995, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT FF]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963240 RFA
Category: Classification
Tariff No. 8517.50.90

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278–1103

Re: Data Service Unit/Channel Service Unit (DSU/CSU); WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; NY 818275, revoked.

DEAR MR. HECK:

This is in reference to NY 818275, dated January 23, 1996, which was issued to you classifying the FrontRunner/MR–2 Data Service Unit/Channel Service Unit (DSU/CSU) as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the FrontRunner/MR–2 DSU/CSU set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involve the FrontRunner/MR–2 DSU/CSU that transmits data over digital networks at speeds ranging from 2.4 to 64 Kbps. The FrontRunner/MR–2 assists in consolidating data, voice, fax and local area network (LAN) traffic over a single leased digital circuit. The dimensions of this stand alone unit are 8.5 inches wide by 3.1 inches high by 11.3 inches deep, and it weighs 4 pounds.

The FrontRunner/MR–2 offers an assortment of features, these include: a wide selection of data rates, including 64 Kbps Clear Channel; rate adaption for support of subrate devices over 56/54 Kbps leased lines; dial backup capability to external devices such as Basic Rate ISDN TA's; and, a compact standalone unit that frees space for data, voice, fax and LAN channels in MICOM's integration products. The FrontRunner is typically connected in line between Marathon Network Servers or NetRunner Integration Routers.

Issue:

Whether the FrontRunner/MR–2 DSU/CSU is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.

* * * * * * *

8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the FrontRunner/MR–2 DSU/CSU is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In NY 818275, dated January 23, 1996, Customs classified the FrontRunner/MR–2 DSU/CSU under subheading 8471.80.10, HTSUS. However, it is our understanding that the FrontRunner/MR–2 DSU/CSU is not intended for use as a connecter in an ADP system such as a LAN. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) APPARATUS FOR CARRIER-CURRENT LINE SYSTEMS OR FOR DIGITAL LINE SYSTEMS
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the FrontRunner/MR–2 DSU/CSU functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The FrontRunner/MR–2 DSU/CSU is classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for

carrier-current line systems or for digital line system * * * : [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

NY 818275, dated January 23, 1996, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT GG]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963241 RFA
Category: Classification
Tariff No. 8517.50.90

MR. RHODES
KAMINO INTERNATIONAL TRANSPORT, INC.
370 McClellan Highway
East Boston, MA 02128

Re: Ethernet-to-Ethernet Bridges; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; NY 885967, revoked.

DEAR MR. RHODES:

This is in reference to NY 885967, dated May 14, 1993, which was issued to you on behalf of Cabletron Systems, Inc., classifying two models of Ethernet-to-Ethernet Bridges as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the Ethernet-to-Ethernet Bridges set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involves two models of Ethernet-to-Ethernet Bridges that are used for connecting two Local Area Networks (LAN) types and control information exchange between the two segments.

Model Number NB–20E is a medium-performance bridge that connects two 10 Mbps Ethernet segments. This bridge features a software filtering system that determines which packets are allowed to pass through the bridge. The source address table of the NB–20E is capable of holding up to 2,048 addresses, has a filtering rate of 15,000 packets per second, and can forward packets at a rate of 8,000 packets per second.

Model Number NB–25E is a high-performance bridge that connects two 10 Mbps Ethernet segments. This bridge features a hardware filtering system that determines which packets are allowed to pass through the bridge without imposing a load on the host central processing unit (CPU).

Issue:

Whether the Ethernet-to-Ethernet Bridges are classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.

* * * * * * *

8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the Ethernet-to-Ethernet Bridges are described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In NY 885967, dated May 14, 1993, Customs classified the Ethernet-to-Ethernet Bridges under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the Ethernet-to-Ethernet Bridges are not intended for use as a bridge in an ADP system such as a LAN, but as a bridge between 2 LANs. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the Ethernet-to-Ethernet Bridges function as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The Ethernet-to-Ethernet Bridges are classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy,

including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * * : [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

NY 885967, dated May 14, 1993, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT HH]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963242 RFA
Category: Classification
Tariff No. 8517.50.90

MR. DENNIS HECK
TOWER GROUP INTERNATIONAL, INC.
2400 Marine Avenue
Redondo Beach, CA 90278–1103

Re: Statistical Multiplexers; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; NY A80132, revoked.

DEAR MR. HECK:

This is in reference to NY A80132, dated February 13, 1996, which was issued to you on behalf of Micom Communications Corporation, classifying statistical multiplexers as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the statistical multiplexers set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involves two models of statistical multiplexers, described as a LCi statistical multiplexer and the Val-U-Mux statistical multiplexer. The basic difference between the two multiplexers is that the LCi's are 230/250 volt units and the Val-U-Mux's are 110/115 volt units.

These statistical multiplexers are free standing units that provide remote access to almost any host computer with either 2 channel, 4 channel or 8 channel capability. Both of these models allow as many as eight asynchronous devices to share a single phone line to a host computer using enhanced statistical multiplexer software as its base. The units have front panel LCD's which show the diagnostic texts available, and can mix and match different hosts, terminals and printers through flexible per-channel-end configuration.

These multiplexers are designed, and can be used in both private and public networks, such as private leased networks in one building, and in such areas as campuses and universities and manufacturing companies with distributed (private) data communications requirements.

Issue:

Whether the statistical multiplexers are classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
* * * * * * *	
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the statistical multiplexers are described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In NY A80132, dated February 13, 1996, Customs classified the statistical multiplexers under subheading 8471.80.10, HTSUS. However, it is our understanding that the statistical multiplexers are not intended for use as in multiplexing in an ADP system such as a Local Area Network (LAN), but over a private or public network. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the statistical multiplexers function as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The statistical multiplexers are classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

NY A80132, dated February 13, 1996, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT II]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963243 RFA
Category: Classification
Tariff No. 8517.50.90

CUSTOMS MANAGER
RETIX
9600 Topanga Canyon Boulevard
Chatsworth, CA 91311

Re: Retix Remote Bridges, Models 4880 and 4820; PC–320 WAN Controller; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 951570, modified.

DEAR CUSTOMS MANAGER:

This is in reference to HQ 951570, dated October 16, 1992, which was issued to you, classifying Retix Remote/Local Bridges, models 4880, 4820, and 4660, Hubs, and Board Level Products (network interface boards and PC–320 WAN controller), as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the Bridges, models 4880 and 4820, and the PC–320 WAN Controller set forth in that ruling is incorrect. This modification will not affect the classification of the other products.

Facts:

The Retix Remote/Local Bridges ("Bridges"), models 4880 and 4820, are stand alone units. The 4880 Bridge interconnects local area networks (LANs) to create a wide area network (WAN) and transmits by using T1 or 2.048 Mbps. The Bridges manage data with respect to origin, priority, and user ID. At the time of importation, the bridges do not contain EPROMs, cabinet, or power supply.

The PC–320 WAN Controller are "Board Level Products" which provides WAN connectivity for personal computer bus systems or other compatibles.

Issue:

Whether the Bridges, models 4880 and 4820, and the PC–320 WAN Controller, are classifiable under subheading 8471.80.10, HTSUS, as ADP control or adapter units, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
*	* * * * * * *
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the Bridges, models 4880 and 4820, and the PC–320 WAN Controller, are described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 951570, dated October 16, 1992, Customs classified the Bridges, models 4880 and 4820, and the PC–320 WAN Controller, under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the Bridges, models 4880 and 4820, and the PC–320 WAN Controller are not intended for use as a bridge or controller in an ADP system such as a LAN. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) APPARATUS FOR CARRIER-CURRENT LINE SYSTEMS OR FOR DIGITAL LINE SYSTEMS
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the Bridges, models 4880 and 4820, and the PC–320 WAN Controller function as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, they are classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The Bridges, models 4880 and 4820, and the PC–320 WAN Controller, are classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

HQ 951570, dated October 16, 1992, is modified as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT JJ]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963244 RFA
Category: Classification
Tariff No. 8517.50.90

MS. ANNETTE SMITH
INTERTRANS CORPORATION
322 East Grand Avenue South
San Francisco, CA 94080

Re: TSVME 541 X.25 Communication Board; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 952627, modified.

DEAR MS. SMITH:

This is in reference to HQ 952627, dated October 13, 1992, which was issued to you on behalf of Themis Computer, classifying various networking apparatus identified as the TSVME 551 68020 Dual-Port Ethernet Controller and the TSVME 541 X.25 Communication Board, as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the TSVME 541 X.25 Communication Board set forth in that ruling is incorrect. This modification will not affect the classification of the other apparatus.

Facts:

The TSVME 541 X.25 Communication Board is a VMEbus-compatible (Versa Module Europe) double Eurocard (revision C) with intelligent serial line controller capability. The onboard controller circuit provides management of two independent multiprotocol serial lines. It is designed for wide area network (WAN) applications to allow for the transmission and reception of data over carrier-current line systems.

Issue:

Whether the TSVME 541 X.25 Communication Board is classifiable under subheading 8471.80.10, HTSUS, as ADP control or adapter units, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
*	* * * * * * *
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provision the TSVME 541 X.25 Communication Board is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 952627, dated October 13, 1992, Customs classified the TSVME 541 X.25 Communication Board under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the TSVME 541 X.25 Communication Board is not intended for use as a controller in an ADP system such as a Local Area Network (LAN). Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the TSVME 541 X.25 Communication Board functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a

leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The TSVME 541 X.25 Communication Board is classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

HQ 952627, dated October 13, 1992, is modified as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT KK]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963245 RFA
Category: Classification
Tariff No. 8517.50.90

MR. WILLIAM J. LECLAIR
TRANSBORDER CUSTOMS SERVICES, INC.
One Trans-Border Drive, P.O. Box 800
Champlain, NY 12919

Re: Packet Assembler/Disassembler (PAD); WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 952628, revoked.

DEAR MR. LECLAIR:

This is in reference to HQ 952628, dated October 13, 1992, which was issued to you on behalf of EDA Instruments, Inc., classifying the Packet Assembler/Disassembler as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the Packet Assembler/Disassembler set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involves the Packet Assembler/Disassembler (PAD) which is a data communications multiplexor designed to operate on X.25 networks provided by both public and private communications carriers, in other words, telephone companies. PADs are utilized in the following typical data network communication system configuration: COMPUTER + PAD + MODEM = NETWORK = MODEM + PAD + COMPUTER.

The MCN.1008 Asynchronous PAD contains the logic and support circuitry necessary for asynchronous communication over private or public data networks. The MCN.1008 PAD is an X.3 PAD which allows from one to eight device interfaces to share a common X.25 communication trunk. The PAD can adapt to different types of devices through the assignment of a set of parameter values for each interface. There are also parameters to control the format of data transfer between a terminal and a computer, to improve communication efficiency by reducing the number of packets generated over the network. These parameters can be software configured according to the user's needs and are stored in a battery backed up memory called NV (non-volatile) RAM.

Issue:

Whether the PAD is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *;
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
* * * * * * *	
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *;
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the PAD is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 952628, dated October 13, 1992, Customs classified the PAD under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the PAD is not intended for use as a multiplexer in an ADP system such as a Local Area Network (LAN), but as a multiplexer over public and private communications carriers. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or

electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the PAD functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The PAD is classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

HQ 952628, dated October 13, 1992, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT LL]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963246 RFA
Category: Classification
Tariff No. 8517.50.90

MR. RICHARD KIBLER
TELEMATICS INTERNATIONAL INC.
1201 Cypress Creek Road
Ft. Lauderdale, FL 33309

Re: Communications Processors ACP 10, 20, 40, 50; Network Access Controller; X.25 Packet Switch; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 954059, revoked.

DEAR MR. KIBLER:

This is in reference to HQ 954059, dated July 16, 1993, which was issued to you, classifying communications processors as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the communications processors set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involves communications processors which consist of a base unit which includes a chassis, power supply, central processor unit (CPU), internal storage devices, and may contain a 3.5 inch disk drive. These products enable users to establish and manage private data networks in corporate environments for the simultaneous transmission of synchronous and asynchronous data utilizing the X.25 public packet switched networks such as U.S. Sprint, Telenet, AT&T, and British Telecom Tymnet, in the United States.

These products provide interconnection and call routing between X.25 compliant equipment, such as Packet Assemblers/Disassemblers, X.25 host computers, gateways and other switches within a data network. Standard functions include packet data switching, data concentration, data routing, data error recovery and network data flow control. The common or commercial designation for these products is "Network Access Controller" or "X.25 Packet Switch."

Issue:

Whether the communications processors are classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
*	* * * * * * *
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the communications processors are described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 954059, dated July 16, 1993, Customs classified the communications processors under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the communications processors are not intended for use as a router in an ADP system such as a Local Area Network (LAN). Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) APPARATUS FOR CARRIER-CURRENT LINE SYSTEMS OR FOR DIGITAL LINE SYSTEMS
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modula-

tion technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).

These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the communications processors function as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The communications processors are classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

HQ 954059, dated July 16, 1993, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT MM]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963247 RFA
Category: Classification
Tariff No. 8517.50.90

MR. RICHARD KIBLER
TELEMATICS INTERNATIONAL INC.
1201 Cypress Creek Road
Ft. Lauderdale, FL 33309

Re: Programmable Communication Processors PCP S240, S400, S4500, 5500; Packet Switching Backbone Node; X.25 Concentrator Node; Multiprotocol Network Access Node; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 954093, revoked.

DEAR MR. KIBLER:

This is in reference to HQ 954093, dated July 22, 1993, which was issued to you, classifying programmable communication processors as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the communications processors set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involves the Telematics Programmable Communication Processors which are programmable processors utilizing Telematics, the proprietary TRAX operating system. They can be configured to function as a packet switching backbone node, an X.25 concentrator node, a multiprotocol network access node, a gateway to local area network (LAN), wide area network (WAN), private and public data networks, and as a network management center. They are commonly and commercially designated as "X.25 Packet Switches."

The PCP S240 consists of a 115/230 VAC chassis, 175 watt power supply, a 68020 processor, space for up to two 4MB memory cards, and either a 40MB or 100MB fixed disk. A num-

ber of options may be added to the S240 including Line Processing Expanders, and Ethernet Line Adapters, to provide specific telecommunication type functions.

The PCP S400 consists of a 115/230 VAC chassis, a 68020 processor, space for up to two 4MB memory cards, a CPE transition card, an Input/Output Processor, and can be configured to host up to two storage devices including a 640K microfloppy, a 40MB fixed disk and a 100MB fixed disk. A number of options may be added to the S400 including full duplex dual, quad, and octal channel input/output cards to provide specific telecommunications type functions.

The PCP S4500 consists of a 115/230 VAC chassis, up to three 68020 processors, and has space for up to four 4MB memory cards, an Address Protection Module, a Network Communications Processor, and can be configured to accommodate a 640KB microfloppy and up to four 40MB or 100MB fixed disks. A number of options can be added to the S4500 such as Line Processing Modules, Line Processing Extenders, Ethernet Line Adapters, and Transmission Communications Processors, to provide telecommunications type functions.

The PCP 5500 consists of a 115/230 VAC chassis, up to five 68020 processors, and has space for up to four 4MB memory cards, an Address Protection Module, a Network Communications Processor, up to two Transmission Communications Processor cards, and can be configured to accommodate a 640KB microfloppy and up to four 40MB or 100MB fixed disks. A number of options can be added to the S5500 such as Ethernet Line Adapters, and Transmission Communications Processors, to provide specific telecommunications type functions.

Issue:

Whether the programmable communication processors are classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
*	* * * * * *
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the programmable communications processors are described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 954093, dated July 22, 1993, Customs classified the programmable communication processors under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the programmable communication processors are not intended for use as a switch in an ADP system such as a Local Area Network (LAN). Because the mer-

chandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the programmable communication processors function as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The programmable communication processors are classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

HQ 954093, dated July 22, 1993, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT NN]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 963248 RFA
Category: Classification
Tariff No. 8517.50.90

MR. MARK JONES
IMPORT/EXPORT SPECIALIST
HITACHI AMERICA, LTD.
50 Prospect Avenue
Tarrytown, NY 10591-4698

Re: Asynchronous Transfer Mode (ATM) Switch/Multiplexor; Model AMS5000; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 954249, revoked.

DEAR MR. JONES:

This is in reference to HQ 954249, dated August 9, 1993, which was issued to you, classifying an asynchronous transfer mode (ATM) switch/multiplexor as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the ATM switch/multiplexor set forth in that ruling is incorrect.

Facts:

The merchandise under consideration involves the Hitachi Asynchronous Transfer Mode (ATM) Switch/Multiplexor, model AMS5000, is designed for and marketed to network service providers for the interconnection and communication of local area networks ("LANs"). The ATM Switch/Multiplexor functions as a switching device, routing data packets of information. The ATM closely resembles a packet switching device. In addition to transmitting information from one LAN to another, the ATM Switch/Multiplexor is capable of transmitting digital video, and multimedia, such as medical imaging and high definition television ("HDTV").

Issue:

Whether the ATM Switch/Multiplexor is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
* * * * * * *	
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the ATM Switch/Multiplexor is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 954249, dated August 9, 1993, Customs classified the ATM Switch/Multiplexor under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the ATM Switch/Multiplexor is not intended for use as a switch in an ADP system such as a LAN. Instead, the ATM Switch/Multiplexor connects one LAN to another LAN. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the ATM Switch/Multiplexor functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The ATM Switch/Multiplexor is classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

HQ 954249, dated August 9, 1993, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT OO]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA–2 RR:CR:GC 963249 RFA
Category: Classification
Tariff No. 8471.80.10

MS. SUSAN KOHN ROSS
ROSS & ASSOCIATES
5777 West Century Blvd.
Suite 520
Los Angeles, CA 90045–5659

Re: "TROLI" Module; ADP Unit; Control or Adapter Unit; LAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; HQ 955907, modified.

DEAR MS. ROSS:

This is in reference to HQ 955907, dated July 6, 1994, which was issued to you on behalf of Pulse Engineering, Inc., classifying the "TROLI" module for local area network (LAN), as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining other types of network equipment, we found that the "Law and Analysis" Section in that ruling needs to be modified. This modification will not affect the "Holding" Section.

Facts:

The "TROLI" Module (Token Ring Optimized Interface) is a module that is mounted on a Network Interface Board "NIB" to provide an analog connection between a Texas Instruments COMMprocessor and the connector used to transmit and receive encoded signals over either 150 Ohm standard twisted pair ("STP") cable or 100 Ohm UTP cable. The TROLI module performs the major portion of the local area networking ("LAN") interface board and facilitates the encoding and decoding of information moving to and from the personal computer ("PC").

Issue:

Whether the "TROLI" Module is classifiable under subheading 8471.80.10, HTSUS, as ADP control or adapter units?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

In the "Law and Analysis" section of HQ 955907, dated July 6, 1994, Customs stated that: "[i]t is our opinion that rather than "processing" being the principal function of such Local Area Network ("LAN") ***and Wide Area Network ("WAN") equipment***, their principal function is, in fact, to effectuate interconnection of the CPU unit to other units or ADP machines, thereby serving "control" and "adaption" functions." (***Emphasis added***).

In the proposed revocations, HQs 963234 through HQ 963253, Customs has determined that WAN equipment does not meet the terms of Legal Note 5(B) to Chapter 84, HTSUS, and therefore are precluded from classification under heading 8471. Therefore, that portion in the "Law and Analysis" section of HQ 955907, referring to WAN equipment shall be removed. As the merchandise in HQ 955907 is not WAN equipment, but is LAN equipment, this modification will not affect the "Holding" section.

Holding:

The "TROLI" Module is classifiable under subheading 8471.80.10, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof; * * *: [o]ther units of automatic d::ta processing machines: [c]ontrol or adapter units * * *"

Effect on Other Rulings:

HQ 955907, dated July 6, 1994, is modified as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT PP]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963250 RFA
Category: Classification
Tariff No. 8517.50.60

CUSTOMS MANAGER
NORTHERN TELECOM INC.
77 Oriskany Drive
Tonawanda, NY 14150

Re: Data Switching Device; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 956406, revoked.

DEAR CUSTOMS MANAGER:

This is in reference to HQ 956406, dated September 26, 1994, which classified your data switching device as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the data switching device set forth in that ruling is incorrect.

Facts:

The merchandise under consideration consists of a data switching device (model no. DPN–100), imported from Canada. It is designed to handle large scale, wide area data networks (WANs) supporting from less than 100 lines to over 1,000,000 lines. This enables users to send data between multiple points, usually host computers and terminals. Typical user applications include electronic funds transfers, electronic mail, file transfers between computers, and point of sale or credit card authorization terminal transaction processing with a host computer. These applications usually involve industries such as banking, utilities, government, public telephone companies, large corporations, and retail industries.

The data switching device requires an external modem to transmit and receive data over carrier current line systems. However, it is dedicated to the transmission between two points of electrical impulses representing text and/or images and other data using a line connection connecting the transmitting station to the receiving station. The device is not intended for the transmission of speech or other sounds.

Issue:

Whether the data switching device is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.60, HTSUS, as other telegraphic apparatus for carrier-current line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
* * * * * * *	
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.60	For carrier-current line systems. * * *

We must first ascertain in which HTSUS provisions the data switching device is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 956406, dated September 26, 1994, Customs classified the data switching device under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the data switching device is not intended for use as a switch in an ADP system such as a LAN. Instead, the data switching device assists in the connection of one LAN to another LAN. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the data switching device functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.60, HTSUS.

Holding:

The data switching device is classifiable under subheading 8517.50.60, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [f]or carrier-current line systems. * * *"

Effect on Other Rulings:

HQ 956406, dated September 26, 1994, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT QQ]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963251 RFA
Category: Classification
Tariff No. 8517.50.90

MR. HARRY WOOD
H.A. & J.L. WOOD, INC.
Pembina, ND 58271

Re: "DevelNet System; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 952631, revoked.

DEAR MR. WOOD:

This is in reference to HQ 952631, dated October 13, 1992, which was issued to you, classifying the DevelNet System as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the DevelNet System set forth in that ruling is incorrect.

Facts:

The DevelNet System allows the user to create regional or national "wide area" networks (WANs) by connecting various local area networks (LANs) into a fully integrated data communications network. This will permit users of the various terminals, computers, or other devices, in one part of the network to communicate with other equipment (users, data bases, terminals, etc.) throughout the network which may operate with different communications protocols and speeds.

In addition, DevelNet is being developed to provide access to public and private data transmission networks such as Telenet, Tymnet, Datapac and Ethernet. DevelNet is also being designed to incorporate data PBX (Private Branch eXchange) or LAN devices from other vendors into its WAN. This will permit customers who have already installed local data communications equipment (i.e., LANs) to implement a WAN without having to replace previously installed equipment. DevelNet has been designed to incorporate network management features, redundant power supplies, controller boards, and self diagnostic capabilities.

Issue:

Whether the DevelNet System is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
* * * * * * *	
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the DevelNet System is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 952631, dated October 13, 1992, Customs classified the DevelNet System under subheading 8471.99.15 (now, 8471.80.10), HTSUS. However, it is our understanding that the DevelNet System is not intended for use as a connecter or an adapter in an ADP system such as a LAN, but used to connect various LANs over a private or public network system. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the DevelNet System functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The DevelNet System is classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

HQ 952631, dated October 13, 1992, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT RR]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963252 RFA
Category: Classification
Tariff No. 8517.50.90

ROLAND L. SHRULL, ESQ.
MIDDLETON & SHRULL
44 Mall Road, Suite 208
Burlington, MA 01803

Re: Shiva AccessPort; Routers; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 961364, revoked.

DEAR MR. SHRULL:

This is in reference to Protest No. 0401–1997–100506, which you filed on behalf of Shiva Corporation. On June 30, 1998, Customs issued HQ 961364, classifying the Shiva AccessPort as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the Shiva AccessPort set forth in that ruling is incorrect. This revocation will have no effect on the protest determination.

Facts:

The merchandise consists of the Shiva AccessPort, which is a stand-alone router geared to telecommuters and small branch office users requiring remote access to Internet service providers and large corporate local area networks (LANs). Through the use of this equipment over a telephone line, branch office employees may perform such functions as send and receive electronic mail, download critical documents, and reference product and order information. The AccessPort's hardware specifications consist of the following: one 10BaseT Ethernet Interface, one RS232 Admin Port, two analog telephone sockets, one integrated services digital network (ISDN) basic rate interface (BRI), front panel light emitting diodes (LEDs) for status review, external power supply, and Ethernet and ISDN cables. It allows for aggregation of two ISDN B-channels using multi-link point-to-point protocol (PPP) for 128 kbps throughput, and supports voice, facsimile, and data communication.

To keep connection time at a minimum, the router utilizes routing technology referred to as "spoofing", which distinguishes when one LAN system is communicating with another over the telephone line and disconnects the telephone line when no such communication occurs. The AccessPort can provide up to 16 Internet protocol (IP) addresses, subnet mask, gateway address, domain name, and primary and secondary addresses, simplifying set up of small offices. The AccessPort coordinates with ADP machines utilizing Windows installed Wizard and Shiva Monitor graphics software. The AccessPort also contains the mass deployment tool (MDT), which allows network managers to control the configuration of a large number of AccessPorts centrally. A Windows graphics interface allows AccessPort configurations to be saved in ASCII format and provides tools allowing transfer of configurations and firmware upgrades to and from AccessPorts.

Issue:

Whether the Shiva AccessPort is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.

* * * * * * *

8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:
8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the Shiva AccessPort is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 961364, dated June 30, 1998, Customs classified the Shiva AccessPort under subheading 8471.80.10, HTSUS. However, it is our understanding that the Shiva AccessPort is not intended for use as a router in an ADP system such as a LAN, but used to route signals over a private or public network system. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) Apparatus For Carrier-Current Line Systems or For Digital Line Systems
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the Shiva AccessPort functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The Shiva AccessPort is classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line tele-

phone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

HQ 961364, dated June 30, 1998, is revoked as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT SS]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 963253 RFA
Category: Classification
Tariff No. 8517.50.90

MR. TERRY GARTMAN
LODESTAR TECHNOLOGY INC.
3101 Maguire Blvd., Suite 251
Orlando, FL 32803

Re: ISDN Personal Computer Adapter; Routers; WAN Equipment; Chapter 84, Note 5(B); Headings 8471 and 8517; EN 85.17; HQ 952812, modified.

DEAR MR. GARTMAN:

This is in reference to HQ 952812, dated December 30, 1992, which was issued to you, classifying the ISDN (Integrated Services Digital Network) PC Adapter as automatic data processing (ADP) control and adapter units under heading 8471 of the Harmonized Tariff Schedule of the United States (HTSUS). In the course of examining similar merchandise, we now believe that the classification of the ISDN PC Adapter set forth in that ruling is incorrect. This modification will not affect the classification of the other apparatus.

Facts:

The "ISDN PC Adapter" is a basic rate interface card which is designed to be incorporated into a personal computer. It is capable of connecting two devices, usually one telephone and one personal computer, to a basic rate ISDN line from the telephone company. It performs packet switching of data using X.25 protocol and circuit switching of data using either X.25 or V.120 protocols. It is also possible to attach an analogue telephone to the B-Channel using the RJ–11 connector jack on the adapter's back bracket.

Issue:

Whether the ISDN PC Adapter is classifiable under subheading 8471.80.10, HTSUS, as an ADP control or adapter unit, or under subheading 8517.50.90, HTSUS, as other telegraphic apparatus for digital line systems?

Law and Analysis:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

The HTSUS provisions under consideration are as follows:

8471	Automatic data processing machines and units thereof; * * *:
8471.80	Other units of automatic data processing machines:
8471.80.10	Control or adapter units * * *.
*	* * * * * *
8517	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system; * * *:

8517.50	Other apparatus, for carrier-current line systems or for digital line systems:
	Other:
	Telegraphic:
8517.50.90	Other. * * *

We must first ascertain in which HTSUS provisions the ISDN PC Adapter is described. Legal Note 5(B) to Chapter 84, HTSUS, states:

> (B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all the following conditions:
>
> (a) It is of a kind solely or principally used in an automatic data processing system;
>
> (b) It is connectable to the central processing unit either directly or through one or more other units; and
>
> (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

In HQ 952812, dated December 30, 1992, Customs classified the ISDN PC Adapter under subheading 8471.99.15, HTSUS. However, it is our understanding that the ISDN PC Adapter is not intended for use as a control or adapter in an ADP system such as a LAN, but used to interconnect signals over a private or public network system. Because the merchandise is not of a kind solely or principally used in an automatic data processing system, the merchandise does not meet the definition of an ADP unit as defined in Legal Note 5(B), and is therefore precluded from classification in heading 8471, HTSUS.

Heading 8517, HTSUS, provides for electrical apparatus for line telephony or telegraphy, including telecommunication apparatus for digital line systems. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989). EN 85.17, page 1472, states, in pertinent part, as follows:

> [t]he term "electrical apparatus for line telephony or line telegraphy" means apparatus for the transmission between two points of speech or other sounds (or of symbols representing written messages, images or other data), by variation of an electric current or of an optical wave flowing in a metallic or dielectric (copper, optical fibres, combination cable, etc.) circuit connecting the transmitting station to the receiving station.
>
> The heading covers all such electrical apparatus designed for this purpose, including the special apparatus used for carrier-current line systems.
>
> * * * * * * *
>
> (III) APPARATUS FOR CARRIER-CURRENT LINE SYSTEMS OR FOR DIGITAL LINE SYSTEMS
>
> These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (words, data, images, etc.).
>
> These systems include all categories of multiplexers and related line equipment for metal or optical-fibre cables. "Line equipment" includes transmitters and receivers or electro-optical converters. Combined modulators-demodulators (modems) are also classified here.

Because the ISDN PC Adapter functions as apparatus for the transmission between two points of speech or other sounds or symbols over a telephone or a leased line, it is classifiable in heading 8517, HTSUS, specifically under subheading 8517.50.90, HTSUS.

Holding:

The ISDN PC Adapter is classifiable under subheading 8517.50.90, HTSUS, which provides for: "[e]lectrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line system * * *: [o]ther apparatus, for carrier-current line systems or for digital line systems: [o]ther: [t]elegraphic: [o]ther. * * *"

Effect on Other Rulings:

HQ 952812, dated December 30, 1992, is modified as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TUNGSTEN CARBIDE WEAR PADS FOR BLADES USED WITH SNOW PLOWS AND MOTOR GRADERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Revocation of ruling letter and treatment relating to tariff classification of tungsten carbide wear pads.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of tungsten carbide wear pads, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on October 20, 1999, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 7, 2000.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information

concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on October 20, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 42, proposing to revoke *NY* D84998, dated November 25, 1998, which classified carbide wear pads for snow plows as cermets and articles thereof, in subheading 8113.00.00, HTSUS. No comments were received in response to this notice.

As stated in the proposed notice this modification will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking *NY* D84998 to reflect the proper classification of carbide wear pads for snow plows in subheading 8431.49.90, HTSUS, as parts suitable for use solely or principally with machinery of heading 8426, 8429 or 8430, pursuant to the analysis in *HQ* 962735, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: November 22, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, November 22, 1999.

CLA–2 RR:CR:GC 962735 JAS
Category: Classification
Tariff No. 8431.49.90

MR. KEMIN SUN
HOCTENZ RESOURCES, INC.
925 Irwin Run Road, Suite 203
West Mifflin, PA 15122

Re: *NY* D84998 Revoked; Carbide Wear Pads for Snow Plows and Motor Graders.

DEAR MR. SUN:

In a letter, dated April 8, 1999, reference CU90408a, you request reconsideration of *NY* D84998, a ruling on the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of tungsten carbide wear pads for blades used on snow plows and motor graders. We have reviewed this classification and determined that it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* D84998 was published on October 20, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 42. No comments were received in response to that notice.

Facts:

In *NY* D84998, which the Director of Customs National Commodity Specialist Division, New York, issued to your Customs broker on November 25, 1998, tungsten carbide wear pads or inserts which form the cutting edge or working part of blades on snow plows, motor graders and bulldozers were held to be classified as cermets and articles thereof, under subheading 8113.00.00, HTSUS.

The wear pads are 88–90 percent tungsten carbide with 10–12 percent cobalt binder. They typically measure 3/8 in. x 9/16, 3/4, 5/8, 17/32 and 13/16 x 1 in. In the United States, steel bar is cut to customer-specified blade lengths and the tungsten carbide wear pads brazed or welded in a groove milled into the blades' edge. The finished blades are then drilled and bolted to the machine. The wear pads are not replaceable and become integral working parts of the blade. When the wear pads become worn, the entire blade is replaced.

The HTSUS provisions under consideration are as follows:

8113.00.00	Cermets and articles thereof, including waste and scrap
* * * * * * *	
8431	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430:
	Of machinery of heading 8426, 8429 or 8430:
8431.49	Other
8431.49.90	Other

Issue:

Whether the tungsten carbide wear pads are parts solely or principally used with earth moving machines.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. Goods that are identifiable as parts of machines of headings 84 or 85 are classifiable in accordance with Section XVI, Note 2, HTSUS. Under Note 2(a), parts which are goods included in a heading of Chapter 84 or Chapter 85 are in all cases to be classified in their respective headings. Under Note 2(b), parts that are solely or principally used with a particular kind of machine or with a number of machines of the same heading are to be classified with the machines of that kind, or in heading 8431, among other headings, as appropriate.

The tungsten carbide wear pads, being sintered metal carbides or metal carbides sintered with a metal, are considered cermets for tariff purposes. Consequently, *NY* D84998 classified the wear pads as cermets, in subheading 8113.00.00, HTSUS. It was stated in the decision that when the wear pad wore out it was replaced by another wear pad.

It is now apparent that the tungsten carbide wear pads become integral to the blade of the machine so that when the pads become worn the entire blade is replaced. This information is contained in a letter, dated April 23, 1999, from a domestic fabricator of blades for bulldozers, motor graders, snow plows and various other earth moving machines.

For tariff purposes, a "part" is an integral, constituent component of another article necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. The base metal blade is the component that enables the dozer or grader to perform the material removal function for which it was designed. Such blades are parts for tariff purposes. The tungsten carbide wear pads are integral components of and form the actual working part of the blade. Like the blades, the wear pads are parts for tariff purposes.

Holding:

Under the authority of GRI 1, and Section XVI, Note 2(b), HTSUS, the tungsten carbide wear pads are provided for in heading 8431. They are classifiable in subheading 8431.49.90, HTSUS.

Effect on Other Rulings:

NY D84998, dated November 25, 1998, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF WASHER FLUID NOZZLES, TANK ASSEMBLIES, AND WASHER FLUID TANK CAPS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification and revocation of ruling letters and revocation of treatment relating to tariff classification of washer fluid nozzles, tank assemblies, and washer fluid tank caps.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings relating to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of washer fluid nozzles, tank assemblies, and washer fluid tank caps, and to revoke any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed modification was published on October 13, 1999, in the CUSTOMS BULLETIN.

EFFECTIVE DATE: This modification and revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 7, 2000.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties,

collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on October 13, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 41, proposing to revoke *NY* D86147 and *NY* D86149, both dated January 20, 1999, which classified washer fluid tank caps and washer fluid nozzles for motor vehicles, respectively, in subheading 8708.99.80, Harmonized Tariff Schedule of the United States (HTSUS), as other parts and accessories of motor vehicles. The notice also proposed to modify a protest review decision, *HQ* 956900, dated July 10, 1999, which classified plastic front and rear nozzle assemblies and rear tanks for cleaning the windshields of motor vehicles in subheading 8708.99.50, HTSUS, as other parts and accessories of motor vehicles. No comments were received in response to this notice.

As stated in the proposed notice this modification and revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking *NY* D86147 and *NY* D86148, both dated January 20, 1999, to reflect the proper classification of the subject merchandise in subheading 8424.90.90, HTSUS, as other parts of mechanical appliances for projecting, dispersing, or spraying liquids or powders, pursuant to the analysis in *HQ* 962676, which is set forth as Attachment "A" to this document. Likewise, Customs is modifying *HQ* 956900, dated July 10, 1995, to reflect the proper classification of the subject merchandise in subheading 8424.90.90, HTSUS, pursuant to the analysis in *HQ* 963189, which is set forth as Attachment "B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: November 19, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 19, 1999.

CLA–2 RR:CR:GC 962676 JAS
Category: Classification
Tariff No. 8424.90.90

ROBERT J. RESETAR
PORSCHE CARS NORTH AMERICA, INC.
980 Hammond Drive, Suite 1000
Atlanta, GA 30328

Re: *NY* D86147, *NY* D86149 Revoked; Washer Fluid Tank Cap, Washer Fluid Nozzle.

DEAR MR. RESETAR:

This is in response to your letter, dated April 14, 1999, requesting that we reconsider *NY* D86147, issued to Porsche on January 20, 1999, on the classification of washer fluid tank caps for motor vehicles. This article was held to be classifiable in subheading 8708.99.80, Harmonized Tariff Schedule of the United States (HTSUS), as other parts and accessories of motor vehicles. Another ruling to Porsche, *NY* D86149, also dated January 20, 1999, held that washer fluid nozzles for motor vehicles were similarly classifiable. We have reconsidered these rulings and determined that they are incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of *NY* D86147 and *NY* D86149 was published on October 13, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 41. No comments were received in response to that notice.

Facts:

The washer fluid tank cap is a plastic top affixed to a washer fluid reservoir for motor vehicles. A flexible plastic hose with the washer fluid nozzle on one end passes through a hole in the tank cap. Washer fluid is drawn up through the hose by means of suction created by the washer fluid motor and sprayed on the windshield. The washer fluid nozzle is actually a combination strainer/check valve of plastic and rubber. The strainer prevents larger objects from clogging the system and the check valve keeps washer fluid from draining back into the tank.

In your April 14, 1999, letter, you suggested a provision in heading 8424, HTSUS, as parts of mechanical appliances for projecting, dispersing or spraying liquids or powders or, alternatively, a provision in heading 8481, HTSUS, as taps, cocks, valves and similar articles, as potentially applicable.

The HTSUS provisions under consideration are as follows:

8424	Mechanical appliances for projecting, dispersing or spraying liquids or powders * * *; parts thereof:
8424.90	Parts:
8424.90.90	Other

*	*	*	*	*	*	*	
8708			Parts and accessories for the motor vehicles of headings 8701 to 8705:				
			Other parts and accessories of bodies:				
8708.29			Other:				
8708.29.50			Other				
			Other parts and accessories:				
8708.99			Other:				
8708.99.80			Other				

Issue:

Whether the washer fluid tank cap and the washer fluid nozzle are parts of mechanical spraying appliances.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Section XVI, Note 1(l), HTSUS, excludes articles of Section XVII. However, Section XVII, Note 2(e), HTSUS, excludes from the expressions "*parts*" and "*parts and accessories*" machines or apparatus of headings 8401 to 8479, or parts thereof. Therefore, if the washer fluid tank cap and the washer fluid nozzle are parts of a spraying appliance of heading 8424 they cannot be classified in heading 8708.

Section XVI, Note 2, HTSUS, is the authority under which Customs classifies goods that are identifiable parts of machines or apparatus of Chapters 84 and 85. Parts which are goods included in any heading of Chapter 84 or Chapter 85 are in all cases classified in their respective headings. *See* Note 2(a). Parts suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading, are classifiable with the machines with which they are solely or principally used. *See* Note 2(b).

As to the applicability of heading 8424, the ENs on p. 1289, state, in relevant part, the heading includes parts for the appliances and machines of heading 8424. Parts falling in this heading thus include, *inter alia*, reservoirs for sprayers, spray nozzles, lances and turbulent sprayer heads not of a kind described in heading 84.81. Thus, the washer fluid tank cap and washer fluid nozzle, being integral, constituent and component parts necessary to the completion of mechanical spraying appliances of heading 8424, are likewise classifiable in heading 8424, in accordance with Section XVI, Note 2(b). This eliminates heading 8708 from consideration. The washer fluid nozzle is a combination strainer/check valve. While an examination of the heading 84.81 ENs on pp. 1430–1432 indicates that taps, cocks and valves of heading 8481 remain in that heading even if incorporating other accessory features, the ENs do not indicate that combination strainers/check valves are intended to be included in that heading.

Holding:

Under the authority of GRI 1 and Section XVI, Note 2(b), HTSUS, the washer fluid tank caps and the washer fluid nozzles are provided for in heading 8424. They are classifiable in subheading 8424.90.90, HTSUS.

Effect on Other Rulings:

NY D86147 and *NY* D86149, both dated January 20, 1999, are revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 19, 1999.

CLA–2 RR:CR:GC 963189 JAS
Category: Classification
Tariff No. 8424.90.90

KENNETH G. WEIGEL, ESQ.
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, DC 20005

Re: *HQ* 956900 Modified; Plastic Front Nozzle, Rear Tank, and Rear Nozzle Assemblies.

DEAR MR. WEIGEL:

This is in reference to *HQ* 956900, issued on July 10, 1995, in connection with protest 4115–94–100005, which you filed on behalf of Jideco of Bardstown, Inc., against a decision of the Port Director, Cleveland. Among other things, the protest contested the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of plastic front and rear nozzle assemblies and rear tanks for cleaning the windshields of motor vehicles. The ruling classified the merchandise in subheading 8708.99.50, HTSUS, as other parts and accessories of motor vehicles. We have reconsidered the classification of this merchandise and determined that it is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of *HQ* 956900 was published on October 13, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 41. No comments were received in response to that notice.

Facts:

As described in *HQ* 956900, the front and rear nozzle assemblies are plastic articles that act as diffusers in a window washer system for motor vehicles when washer fluid is applied to the front and rear windows of the vehicle. The rear tank assembly, also of plastic, provides washer fluid to the rear of the vehicle. When the washer system is activated, the fluid is conveyed from the tank, through the system, onto the windows.

The HTSUS provisions under consideration are as follows:

8424	Mechanical appliances for projecting, dispersing or spraying liquids or powders * * *; parts thereof:
8424.90	Parts:
8424.90.90	Other
* * * * * * *	
8708	Parts and accessories for the motor vehicles of headings 8701 to 8705:
	Other parts and accessories of bodies:
8708.29	Other:
8708.29.50	Other
	Other parts and accessories:
8708.99	Other:
8708.99.80	Other

Issue:

Whether the front and rear nozzle assemblies, and the rear tank assembly, all of plastic, are parts of mechanical spraying appliances.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. Though not dispositive,

the ENs provide a commentary on the scope of each heading of the Harmonized System and Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

On protest, a claim was made under subheading 8512.90.90, HTSUS, as parts of windshield wipers, defrosters and demisters and, alternatively, under subheading 8708.99.50, HTSUS, as other parts and accessories of the motor vehicles of headings 8701 to 8705. *HQ* 956900 rejected the first claim because the articles at issue were neither parts of wiper blades nor parts of motors. However, the claim under subheading 8708.99.50 was sustained. As such, potential classification as other articles of plastics, in Chapter 39, was precluded.

Section XVI, Note 1(l), HTSUS, excludes articles of Section XVII. However, Section XVII, Note 2(e), HTSUS, excludes from the expressions "*parts*" and "*parts and accessories*" machines or apparatus of headings 8401 to 8479, or parts thereof. Therefore, if the front and rear nozzle assemblies and the rear tank assembly are parts of a mechanical spraying appliance of heading 8424, they cannot be classified in heading 8708.

Section XVI, Note 2, HTSUS, is the authority under which Customs classifies goods that are identifiable parts of machines or apparatus of Chapters 84 and 85. Parts which are goods included in any heading of Chapter 84 or Chapter 85 are in all cases classified in their respective headings. *See* Note 2(a). Parts suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading, are classifiable with the machines with which they are solely or principally used. *See* Note 2(b).

As to the applicability of heading 8424, the ENs on p. 1289, state, in relevant part, the heading includes parts for the appliances and machines of heading 8424. Parts falling in this heading thus include, *inter alia*, reservoirs for sprayers, spray nozzles, lances and turbulent sprayer heads not of a kind described in heading 84.81. Thus, the front and rear nozzles and the rear tank assembly, being integral, constituent and component parts necessary to the completion of mechanical spraying appliances of heading 8424, and being solely or principally used with such appliances, are classifiable in heading 8424, in accordance with Section XVI, Note 2(b). This eliminates heading 8708 from consideration. Nozzles similar or substantially similar to the ones at issue here are strainer/check valve combinations. The strainer component prevents larger objects from clogging the system while the valve keeps washer fluids from draining back into the tank. While an examination of the heading 84.81 ENs on pp. 1430–1432 indicates that taps, cocks and valves of heading 8481 remain in that heading even if incorporating other accessory features, the ENs do not indicate that combination strainers/check valves are intended to be included in that heading.

Holding:

Under the authority of GRI 1 and Section XVI, Note 2(b), HTSUS, the plastic front and rear nozzles and the plastic rear tank assembly are provided for in heading 8424. They are classifiable in subheading 8424.90.90, HTSUS.

Effect on Other Rulings:

HQ 956900, dated July 10, 1995, is modified accordingly. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. The liquidation or reliquidation of the entry or entries the subject of protest 4115–94–100005 will not be affected by this action.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION/MODIFICATION OF RULINGS LETTERS AND TREATMENT RELATING TO CLASSIFICATION OF METALLIC TERMINATION PASTES FOR PRINTED CIRCUIT BOARD MANUFACTURE OR RELATED ELECTRONIC APPLICATION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation/modification of tariff classification ruling letters and treatment relating to the classification of metallic termination pastes or thick film for printed circuit board manufacture or related electronic application.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking/modifying four ruling letters pertaining to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of metallic termination pastes or thick film for printed circuit board manufacture or related electronic application and any treatment previously accorded by the Customs Service to substantially identical transactions.

EFFECTIVE DATE: These modifications/revocations are effective for merchandise entered or withdrawn from warehouse for consumption February 7, 2000.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch, (202) 927–1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable

Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on October 13, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 41, proposing to revoke or modify four ruling letters pertaining to the tariff classification of metallic termination pastes or thick film for printed circuit board manufacture or related electronic applications. The notice specifically referred to New York Ruling Letters (NY) B87689, dated October 2, 1997; NY B83870, dated September 8, 1997; NY C81291, dated December 19, 1997; and NY C85805, dated June 4, 1998. In these rulings, Customs determined that conductive metal pastes or thick film used in the manufacture of printed circuit boards or related electronic applications were classified in heading 3824, HTSUS, which is a residual or "basket" provision for, among other things, "* * * chemical products and preparation of the chemical or allied industries, * * * not elsewhere specified or included. * * *" Since the issuance of these rulings, Customs has reviewed the classification of these products from the perspective of the amount of metal, base or precious, contained in the products and has determined that the cited rulings are in error. We have determined that these particular products should be treated as articles of precious or base metal, as appropriate. This is so because the metal pastes are not chemical products of heading 3824, because they are essentially metal products and are not accurately described by the chemical designation. Only one comment was received in response to the notice.

The commenter asserted the correctness of NY C85805 and argued that heading 3824 is not a true residual or basket provision in that at the 8-digit subheading level, classification is determined by "use." This "use", it is argued, must take precedence over the "articles" provision for "[o}ther articles of precision metal" of heading 7115, HTSUS. The commenter further argues that the "articles" provision of heading 7115, HTSUS, is also a residual provision, and that it does not describe the subject merchandise, in part, because it is not described in the Explanatory Notes (EN's) to heading 7115. Additionally, it is argued that the General Rule of Interpretation (GRI) 3(a) may not be used to compare headings 3824 and 7115, in that the terms of the rule prohibit its use when each heading refers to part only of the materials or substances. The commenter claims that in this instance, the headings only refer to part of the product.

The commenter further argues, in the alternative, that the metal portion of the product must be considered as a powder and that under GRI 3(b), classification would be in heading 7106 or 7110, as appropriate. The next alternative offered is that the product should be considered parts of capacitors under heading 8532, HTSUS.

Customs disagrees with all the contentions presented, for the following reasons. Customs maintains that heading 3824 is a residual or "bas-

ket" provision for chemicals. Each relevant part of the heading contains language that identifies the heading as residual (with the obvious understanding that the product under consideration is not a prepared binder for foundry molds or cores). The rationale for Customs classification is not that the heading 3824 classification is inherently wrong, but that the products are more specifically provided for in the respective metals provisions for articles. Customs would agree that the subheading in which the commenter's product was originally classified is governed by "use"; however, the inclusion of a provision governed by "use" at an 8-digit subheading level will not turn a residual heading into a "use" provision. Moreover, the use of GRI 3(a) is correct in Customs view, in that the products can be described as articles, for tariff purposes, because of their precise, exact, and intentional composition for a specific purpose, and that "[o]ther articles of precious metal" describes the whole product, not just a part of it. By contrast, the phrase "chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included" and "residual products of the chemical or allied industries, not elsewhere specified or included" can only rationally describe the chemical components of the product.

As to the role of the EN's to heading 7115, there is no question that this product is not described by the EN, but it is not excluded either. It is not known whether this product was even considered when the tariff language was formulated. However, in the absence of any guidance in the EN's, Customs remains confident in its understanding that the headings for articles of precious and base metals, as appropriate, describe the product.

As to the classification of the product as a powder, it is not appropriate to consider the pastes and films as powders in that their form as imported is clearly otherwise. The only way that the product would be considered a metal powder for classification purposes would be under a GRI 3(b) analysis in which the classifier would be seeking the essential character of the mixed or composite good. As indicated above, it is not necessary or correct to employ GRI 3(b), when the classification can be settled by GRI 3(a).

As stated in the proposed notice, these revocations/modifications will cover any rulings on this merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of

the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY B87689, dated October 2, 1997; modifying NY B83870, dated September 8, 1997; revoking NY C81291, dated December 19, 1997; and revoking NY C85805, dated June 4, 1998, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 961499, 963179, 963180, 963178. (*see* "Attachments A–D" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs revoking any treatment it previously accorded to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), these rulings will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: November 23, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 23, 1999.

CLA–2 RR:CR:GC 961499 JGB
Category: Classification
Tariff No. 7115.90.40,
7115.90.60, and 7419.99.5050

JAMES L. SAWYER, ESQ.
KATTEN MUCHIN & ZAVIS
525 West Monroe Street, Suite 1600
Chicago, IL 60661–3693

Re: Reconsideration of NY B87689; Termination Paste.

DEAR MR. SAWYER:

This is in response to your letter of March 11, 1998, on behalf of TDK Components USA, Inc., which requests reconsideration of New York Ruling Letter (NY) B87689, issued October 2, 1997, under the Harmonized Tariff Schedule of the United States (HTSUS). You request reclassification in subheading 3824.90.7000, HTSUS. We discussed the classification of this article at a meeting at Headquarters on October 29, 1998. We regret the delay in responding.

This letter is to inform you that B87689 no longer reflects the view of the Customs Service concerning the classification of the termination pastes and that the following reflects our position for these products.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on October 13, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 41, proposing to revoke or modify four ruling letters pertaining to the tariff classification of metallic termination pastes or thick film for printed circuit board manufacture or related electronic applications. Among the four, the notice specifically referred to NY B87689, dated October 2, 1997. Only one comment was received in response to the notice.

Facts:

The products are used in the electronics manufacturing industry and are said to be applied to a non-conducting substrate to form a conductive film, to terminate the capacitors, by providing an electrical connection to the ceramic capacitors's inner electrode, while simuiltaneously forming the capacitor's terminal electrode when included in a printed circuit board.

The products in question are imported in three different compositions: **Silver Palladium Paste (MPS–15)**, containing 63.3 percent by weight of silver and 3.16 percent by weight of platinum (in the form of palladium); **Silver Paste (H–2980)**, containing 72 percent by weight of silver; and **Copper Paste (CPK–6)**, containing 74.61 percent by weight of copper. All Three termination pastes contain appropriate amounts of glass frit, resin, and solvent (over 5 percent aromatic).

Issue:

Whether the termination pastes are classified in heading 3824, HTSUS, as a chemical product or preparation of the chemical or allied industries, or in heading 7115 or 7419, HTSUS, as articles of precious metal or articles of copper, as appropriate.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 3824, HTSUS, provides for "* * * chemical products and preparations of the chemical or allied industries. * * *" Subheading 3824.90.28, HTSUS, specifically provides for "* * *chemical products and preparations of the chemical or allied industries * * *: Other: Other: Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substance: Other." This is a residual or "basket" provision.

Heading 7115, HTSUS, provides for "Other articles of precious metal or of metal clad with precious metal:." Note 4 (a-b) to Chapter 71, which includes heading 7115, HTSUS, provides that the expression "*precious metal*" means silver, gold, and platinum and that the expression "*platinum*" means platinum, iridium, osmium, palladium, rhodium and ruthenium." Note 5 to chapter 71 provides as follows:

> For the purposes of this chapter, any alloy (including a sintered mixture and an intermetallic compound) containing precious metal is to be treated as an alloy of precious metal if any one precious metal constitutes as much as 2 percent, by weight, of the alloy. Alloys of precious metal are to be classified according to the following rules:
>
> (a) An alloy containing 2 percent or more, by weight, of platinum is to be treated as an alloy of platinum;
>
> (b) An alloy containing 2 percent or more, by weight, of gold but not platinum, or less than 2 percent, by weight, of platinum, is to be treated as an alloy of gold;
>
> (c) Other alloys containing 2 percent or more, by weight, of silver are to be treated as alloys of silver.

Heading 7419, HTSUS, provides for "other articles of copper." Subheading 7419.99.5050, HTSUS, provides for other articles of copper, not previously enumerated.

GRI 3(a) provides that "when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:"

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Applying these provisions to the matter at hand, the "articles" provisions for the precious metals and the copper describe the goods. The goods consist principally of the named metals and they have been shown to be finished articles, as opposed to unwrought or primary forms of the metals. Each contains a discrete amount of the metal which presumably permits a desired level of electrical conductivity. Therefore, as articles of the named metals, they are completely and more specifically described by the articles provisions, than by the residual provision for chemicals. Accordingly, under GRI 3(a), the articles provisions prevail over the chemical provision.

Holding:

Paste **MPS–15** is classified in subheading 7115.90.60, HTSUS, the provision for "Other articles of precious metal or of metal clad with precious metal: Other: Other, Other."

Paste **H–2980** is classified in subheading 7115.90.40, HTSUS, the provision for "Other articles of precious metal or of metal clad with precious metal: Other: Other: Of silver, including metal clad with silver."

Paste **CPK 06** is classified in subheading 7419.99.5050, HTSUS, the provision for "Other articles of copper: Other: Other: Other: Other, Other."

NY B87689 is hereby revoked.

In accordance with 19 U.S.C.1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, November 23, 1999.

CLA–2 RR:CR:GC 963179 JGB
Category: Classification
Tariff No. 7115.90.40,
7115.90.60, and 7616.99.5090

MS. LENA DEFAZIO
SHENKERS INTERNATIONAL
380 Turner Way
Aston, PA 19014

Re: Reconsideration and Modification of NY B83870; Conductive Film.

DEAR MS. DEFAZIO:

On September 8, 1997, Customs issued to you, on behalf of E.I. Dupont De Nemours Co., New York ruling (NY) B83870 concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of 5 types of conductive thick film. This letter is to inform you that B83870 no longer reflects the view of the Customs Service concerning the classification of the thick conductive film and that the following reflects our position for these products.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on October 13, 1999, in the CUSTOMS BULLE-

TIN, Volume 33, Number 41, proposing to revoke or modify four ruling letters pertaining to the tariff classification of metallic termination pastes or thick film for printed circuit board manufacture or related electronic applications. Among the four, the notice specifically referred to NY B83870, dated September 8, 1997. Only one comment was received in response to the notice.

Facts:

The products are used in the electronics manufacturing industry and are said to be applied to a non-conducting substrate to form conductive, resistive or insulating films.

Ruling NY B83870 covers five formulations. This modification pertains only to the four conductive films. Therefore, Type 9137, an insulating, non-conductive film remains classified in subheading 3824.90.70, HTSUS. The remaining products have the following chemical composition:

TYPE 4596—gold (30–60%), platinum (10–30%);
TYPE 5704—aluminum oxide (10–30%), glass/ceramic ingredients (30–60%);
TYPE 6177T—silver (>60%), palladium (10–30%), glass/ceramic ingredients (10–30%);
TYPE 9998—silver (>60%), terpineol (10–30%).

Issue:

Whether the thick film products are classified in heading 3824, HTSUS, as a chemical product or preparation of the chemical or allied industries, or in heading 7115 or 7616, HTSUS, as articles of precious metal or articles of aluminum, as appropriate.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 3824, HTSUS, provides for "* * * chemical products and preparations of the chemical or allied industries. * * *" Subheading 3824.90.70, HTSUS, specifically provides for "* * * chemical products and preparations of the chemical or allied industries * * *: Other: Other: Other: Other: Mixtures of dibromoneopentyl glycol; * * *; and Electroplating chemicals and electroless plating solutions and other materials for printed circuit boards, plastics and metal finishings." This is a residual or "basket" provision.

Heading 7115, HTSUS, provides for "Other articles of precious metal or of metal clad with precious metal:." Note 4 (a-b) to Chapter 71, which includes heading 7115, HTSUS, provides that the expression "*precious metal*" means silver, gold, and platinum and that the expression "*platinum*" means platinum, iridium, osmium, palladium, rhodium and ruthenium." Note 5 to chapter 71 provides as follows:

> For the purposes of this chapter, any alloy (including a sintered mixture and an intermetallic compound) containing precious metal is to be treated as an alloy of precious metal if any one precious metal constitutes as much as 2 percent, by weight, of the alloy. Alloys of precious metal are to be classified according to the following rules:
>
> (a) An alloy containing 2 percent or more, by weight, of platinum is to be treated as an alloy of platinum;
>
> (b) An alloy containing 2 percent or more, by weight, of gold but not platinum, or less than 2 percent, by weight, of platinum, is to be treated as an alloy of gold;
>
> (c) Other alloys containing 2 percent or more, by weight, of silver are to be treated as alloys of silver.

Heading 7616, HTSUS, provides for "other articles of aluminum." Subheading 7616.99.5090, HTSUS, provides for other articles of aluminum, not previously enumerated.

GRI 3(a) provides that "when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:"

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings

each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Applying these provisions to the matter at hand, the "articles" provisions for the precious metals and the aluminum describe the goods. The goods consist principally of the named metals and they have been shown to be finished articles, as opposed to unwrought or primary forms of the metals. Each contains a discrete amount of the metal which presumably permits a desired level of electrical conductivity. Therefore, as articles of the named metals, they are completely and more specifically described by the articles provisions, than by the residual provision for chemicals. Accordingly, under GRI 3(a), the articles provisions prevail over the chemical provision.

Holding:

Type 4596 is classified in subheading 7115.90.60, HTSUS, the provision for "Other articles of precious metal or of metal clad with precious metal: Other: Other, Other."

Type 5704 is classified in subheading 7616.99.5090, HTSUS, the provision for "Other articles of aluminum: Other: Other: Other, Other: Other: Other."

Type 6177T is classified in subheading 7115.90.60, HTSUS, the provision for "Other articles of precious metal or of metal clad with precious metal: Other: Other, Other."

Type 9998 is classified in subheading 7115.90.40, HTSUS, the provision for "Other articles of precious metal or of metal clad with precious metal: Other: Other: Of silver, including metal clad with silver."

NY B83870 is hereby modified.

In accordance with 19 U.S.C.1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE.
Washington, DC, November 23, 1999.

CLA–2 RR:CR:GC 963180 JGB
Category: Classification
Tariff No. 7115.90.40 and 7115.90.60

MS. JULIE DIAZ
RANK SHIPPING OF PUERTO RICO, INC.
CARGO SERVICE CORPORATION BUILDING
A–1, Cargo Area Muniz Air Base
Luis Munoz Marin International Airport
Carolina, PR 00983

Re: Reconsideration and Revocation of NY C81291; Conductive Film.

DEAR MS. DIAZ:

On December 19, 1997, Customs issued to you, on behalf of DuPont Electronics, New York ruling (NY) C81291 concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of 5 types of conductive thick film. This letter is to inform you that NY C81291 no longer reflects the view of the Customs Service concerning the classification of the thick conductive film and that the following reflects our position for these products.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on October 13, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 41, proposing to revoke or modify four ruling letters pertaining to

the tariff classification of metallic termination pastes or thick film for printed circuit board manufacture or related electronic applications. Among the four, the notice specifically referred to NY C81291, dated December 19, 1997. Only one comment was received in response to the notice.

Facts:

The products are used in the electronics manufacturing industry and are said to be applied to a non-conducting substrate to form conductive, resistive or insulating films.

Ruling NY C81291 covers five formulations and classified all the products in subheading 3824.90.70, HTSUS. The products have the following chemical composition:

Code 6177L, 6177, and 6277—silver (60%), palladium (metallic) (10–30%)
Code 1194—silver (60%), terpineol (10–30%)
Code 6838—silver (60%), terpineol (10–30%)
Code 1192—silver (60%), terpineol (10–30%)
Code QS 171—silver (60%), dibutyl phthalate (5–10%)

Issue:

Whether the thick film products are classified in heading 3824, HTSUS, as a chemical product or preparation of the chemical or allied industries, or in heading 7115, HTSUS, as articles of precious metal.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 3824, HTSUS, provides for "* * * chemical products and preparations of the chemical or allied industries. * * *" Subheading 3824.90.70, HTSUS, specifically provides for "* * * chemical products and preparations of the chemical or allied industries * * *: Other: Other: Other: Other: Mixtures of dibromoneopentyl glycol; * * *; and Electroplating chemicals and electroless plating solutions and other materials for printed circuit boards, plastics and metal finishings." This is a residual or "basket" provision.

Heading 7115, HTSUS, provides for "Other articles of precious metal or of metal clad with precious metal:." Note 4 (a-b) to Chapter 71, which includes heading 7115, HTSUS, provides that the expression "*precious metal*" means silver, gold, and platinum and that the expression "*platinum*" means platinum, iridium, osmium, palladium, rhodium and ruthenium." Note 5 to chapter 71 provides as follows:

> For the purposes of this chapter, any alloy (including a sintered mixture and an intermetallic compound) containing precious metal is to be treated as an alloy of precious metal if any one precious metal constitutes as much as 2 percent, by weight, of the alloy. Alloys of precious metal are to be classified according to the following rules:
>
> (a) An alloy containing 2 percent or more, by weight, of platinum is to be treated as an alloy of platinum;
>
> (b) An alloy containing 2 percent or more, by weight, of gold but not platinum, or less than 2 percent, by weight, of platinum, is to be treated as an alloy of gold;
>
> (c) Other alloys containing 2 percent or more, by weight, of silver are to be treated as alloys of silver.

GRI 3(a) provides that "when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:"

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Applying these provisions to the matter at hand, the "articles" provisions for the precious metals describe the goods. The goods consist principally of the named metals and they

have been shown to be finished articles, as opposed to unwrought or primary forms of the metals. Each contains a discrete amount of the metal which presumably permits a desired level of electrical conductivity. Therefore, as articles of the named metals, they are completely and more specifically described by the articles provisions, than by the residual provision for chemicals. Accordingly, under GRI 3(a), the articles provisions prevail over the chemical provision.

Holding:

Code 6177L, 6177, and 6277 are classified in subheading 7115.90.60, HTSUS, the provision for "Other articles of precious metal or of metal clad with precious metal: Other: Other, Other."

Code 1194, 6838, 1192, and QS 171 are classified in subheading 7115.90.60, HTSUS, the provision for "Other articles of precious metal or of metal clad with precious metal: Other: Other, Other."

NY C81291 is hereby revoked.

In accordance with 19 U.S.C.1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, November 23, 1999.
CLA–2 RR:CR:GC 963178 JGB
Category: Classification
Tariff No. 7115.90.60

MR. PAUL S. ANDERSON
SONNENBERG & ANDERSON
200 South Wacker Drive
Chicago, IL 60606

Re: Reconsideration and Revocation of NY C85805; Conductive Paste.

DEAR MR. ANDERSON:

On June 4, 1998, Customs issued to you, on behalf of Shoei Electronic Materials, New York Ruling (NY) C85805 concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a conductive paste. This letter is to inform you that NY C85805 no longer reflects the view of the Customs Service concerning the classification of the conductive paste and that the following reflects our position for this product.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on October 13, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 41, proposing to revoke or modify four ruling letters pertaining to the tariff classification of metallic termination pastes or thick film for printed circuit board manufacture or related electronic applications. Among the four, the notice specifically referred to NY C85805, dated June 4, 1998. Your comment was received in response to the notice.

Facts:

The products are used in the electronics manufacturing industry and are said to be used as an electrode material in the manufacture of ceramic chip capacitors.

Ruling NY C85805 classified the product in subheading 3824.90.70, HTSUS. The product consists of silver, palladium, ethyl cellulose, octyl alcohol, terpineol and oleic acid. We presume that the palladium constitutes greater than 2 percent by weight.

Issue:

Whether the thick film products are classified in heading 3824, HTSUS, as a chemical product or preparation of the chemical or allied industries, or in heading 7115, HTSUS, as articles of precious metal.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 3824, HTSUS, provides for "* * * chemical products and preparations of the chemical or allied industries. * * *" Subheading 3824.90.70, HTSUS, specifically provides for "* * * chemical products and preparations of the chemical or allied industries * * *: Other: Other: Other: Other: Mixtures of dibromoneopentyl glycol; * * *; and Electroplating chemicals and electroless plating solutions and other materials for printed circuit boards, plastics and metal finishings." This is a residual or "basket" provision.

Heading 7115, HTSUS, provides for "Other articles of precious metal or of metal clad with precious metal:." Note 4 (a-b) to Chapter 71, which includes heading 7115, HTSUS, provides that the expression "*precious metal*" means silver, gold, and platinum and that the expression "*platinum*" means platinum, iridium, osmium, palladium, rhodium and ruthenium." Note 5 to chapter 71 provides as follows:

> For the purposes of this chapter, any alloy (including a sintered mixture and an intermetallic compound) containing precious metal is to be treated as an alloy of precious metal if any one precious metal constitutes as much as 2 percent, by weight, of the alloy. Alloys of precious metal are to be classified according to the following rules:
>
> (a) An alloy containing 2 percent or more, by weight, of platinum is to be treated as an alloy of platinum;
>
> (b) An alloy containing 2 percent or more, by weight, of gold but not platinum, or less than 2 percent, by weight, of platinum, is to be treated as an alloy of gold;
>
> (c) Other alloys containing 2 percent or more, by weight, of silver are to be treated as alloys of silver.

GRI 3(a) provides that "when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:"

> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

Applying these provisions to the matter at hand, the "articles" provisions for the precious metals describe the goods. The goods consist principally of the named metals and they have been shown to be finished articles, as opposed to unwrought or primary forms of the metals. Each contains a discrete amount of the metal which presumably permits a desired level of electrical conductivity. Therefore, as articles of the named metals, they are completely and more specifically described by the articles provisions, than by the residual provision for chemicals. Accordingly, under GRI 3(a), the articles provisions prevail over the chemical provision.

Your comment asserted the correctness of NY C85805 and argued that heading 3824 is not a true residual or basket provision in that at the 8-digit subheading level, classification is determined by "use." This "use", it is argued, must take precedence over the "articles" provision for "[o]ther articles of precision metal" of heading 7115, HTSUS. You further argue that the "articles" provision of heading 7115, HTSUS, is also a residual provision, and that it does not describe the subject merchandise, in part, because it is not described in the EN's to heading 7115. Additionally, it is argued that the GRI 3(a) may not be used to compare headings 3824 and 7115, in that the terms of the rule prohibit its use when each heading refers to part only of the materials or substances. You claim that in this instance, the headings only refer to part of the product.

You further argue, in the alternative, that the metal portion of the product must be considered as a powder and that under GRI 3(b), classification would be in heading 7106 or

7110, as appropriate. The next alternative offered is that the product should be considered parts of capacitors under heading 8532, HTSUS.

Customs disagrees with all the contentions presented, for the following reasons. Customs maintains that heading 3824 is a residual or "basket" provision for chemicals. Each relevant part of the heading contains language that identifies the heading as residual (with the obvious understanding that the product under consideration is not a prepared binder for foundry molds or cores). The rationale for Customs classification is not that the heading 3824 classification is inherently wrong, but that the products are more specifically provided for in the respective metals provisions for articles. Customs would agree that the subheading in which your client's product was originally classified is governed by "use"; however, the inclusion of a provision governed by "use" at an 8-digit subheading level will not turn a residual heading into a "use" provision. Moreover, the use of GRI 3(a) is correct in Customs view, in that the products can be described as articles, for tariff purposes, because of their precise, exact, and intentional composition for a specific purpose, and that "[o]ther articles of precious metal" describes the whole product, not just a part of it. By contrast, the phrase "chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included" and "residual products of the chemical or allied industries, not elsewhere specified or included" can only rationally describe the chemical components of the product.

As to the role of the EN's to heading 7115, there is no question that this product is not described by the EN's, but it is not excluded either. It is not known whether this product was even considered when the HTSUS and EN language was formulated. However, in the absence of any guidance in the EN's, Customs remains confident in its understanding that the headings for articles of precious and base metals, as appropriate, describe the product.

As to the classification of the product as a powder, it is not appropriate to consider the pastes and films as powders in that their form as imported is clearly otherwise. The only way that the product would be considered a metal powder for classification purposes would be under a GRI 3(b) analysis in which the classifier would be seeking the essential character of the mixed or composite good. As indicated above, it is not necessary or correct to employ GRI 3(b), when the classification can be settled by GRI 3(a).

Holding:

The conductive paste is classified in subheading 7115.90.60, HTSUS, the provision for "Other articles of precious metal or of metal clad with precious metal: Other: Other, Other."

NY C85805 is hereby revoked.

In accordance with 19 U.S.C.1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

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Customs Bulletin and Decisions
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Federal Recycling Program
Printed on Recycled Paper
U.S. G.P.O. 1999–461–850–80062